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Proclamation 10215 of May 21, 2021

The President

National Safe Boating Week, 2021

By the President of the United States of America

A Proclamation

Every year, millions of Americans take time to enjoy our Nation's waterways—one of our great natural treasures. As more Americans get vaccinated against COVID-19, and as warmer weather draws families to our Nation's lakes, rivers, and beaches, this week serves as a critical reminder of the importance of staying safe on the water. Each year during National Safe Boating Week, the Coast Guard and an array of Federal, State, and local partners help save lives and guard against accidents by highlighting safe boating practices.

This year, we celebrate the 50th anniversary of the Federal Boat Safety Act of 1971. The Act created a partnership between the Federal Government and the States to improve the safety of recreational boating. It also established the National Recreational Boating Safety Program and gave the Coast Guard the authority to establish mandatory boat manufacturing and safety standards. The Coast Guard estimates that these efforts have saved nearly 100,000 lives over the last half century.

While most boating trips are enjoyable and safe, tragedy still strikes with alarming frequency. Since 2000, there have been over 13,000 boating-related deaths and over 64,000 boating-related injuries, many of which could have been prevented if proper safety precautions were taken. Whether you are fishing, sailing, or out on the water with family or friends, it is essential to follow safe boating practices for your own protection and the protection of those around you.

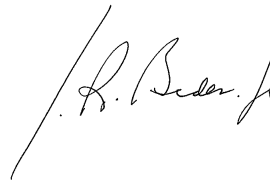
Safe boating begins with education and planning. Human error contributes to the vast majority of boating accidents, which can be minimized by taking an “on-water” boating safety course. Learning and improving your boating skills help increase the odds of an enjoyable and safe boating experience. Every American can ensure that their boat is ready for the water by obtaining a free vessel safety check offered through the U.S. Coast Guard Auxiliary.

I call upon all Americans to follow safe boating practices. By following basic boating safety procedures—wearing life jackets, carrying lifesaving emergency distress and communications equipment, judiciously using the engine cut-off switch, and staying sober when boating—we can prevent the vast majority of boating fatalities and help ensure boaters on America's coastal, inland, and offshore waters stay safe throughout the season.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period before Memorial Day weekend as “National Safe Boating Week.”

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim May 22 through May 28, 2021, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning and practicing safe boating behaviors. I also encourage the Governors of the States and Territories, and appropriate officials of all units of government, to join me in encouraging boating safety through events and activities.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Presidential Documents

Proclamation 10216 of May 21, 2021

National Maritime Day, 2021

By the President of the United States of America

A Proclamation

Since the first days of our Republic, America has been a proud maritime Nation. To this day, the United States Merchant Marine is a pillar of our country's prosperity, playing a vital role in the maintenance of our economic and national security. Through every period of peace and war, our merchant mariners have been dedicated to protecting our freedom and promoting commerce. On National Maritime Day, we honor the steadfast commitment and sacrifices of the men and women who serve in the United States Merchant Marine, and recognize their essential role in safeguarding and strengthening our Nation.

Called the "fourth arm of defense" by President Franklin D. Roosevelt during World War II, the Merchant Marine established itself as a cornerstone of sealift support for our Armed Forces, sailing through theaters of war to deliver troops and supplies while keeping vital ocean supply lines operating. The perseverance and dedication of the Merchant Marine contributed to the Allied victory even as they suffered one of the highest casualty rates of any of our military services.

Our merchant mariners also play a critical role in times of peace. They ensure our economic security by keeping our coastal and inland waterways open to trade, while United States-flagged ships operated by American merchant mariners transport goods across our country and all over the world. United States maritime freight operations helped support \$5.4 trillion of economic activity among the many non-maritime industries that depend on the Merchant Marine for access to world markets. This movement of goods domestically and internationally continues to ensure America's economic competitiveness throughout the world—growing jobs and supporting businesses of all sizes here at home.

Our merchant mariners are also critical to extending United States support and assistance to foreign nations and local communities hit hard by natural disasters and devastating crises. Even in the midst of a worldwide pandemic, these brave men and women have overcome seemingly insurmountable obstacles to fulfill their mission while keeping our Nation's supply chains running.

The operation of the United States-flagged fleet is essential in contributing to the reduction of greenhouse gas emissions and landside congestion, helping provide current and future generations with a more sustainable means of freight transportation. The industry is also working to develop and implement new technologies to continue reducing emissions—an effort my Administration is supporting through new international partnerships.

The maritime industry has long provided opportunity for Americans of all backgrounds—and the Merchant Marine continues to advance a more equitable industry in which barriers to entry and advancement are eliminated.

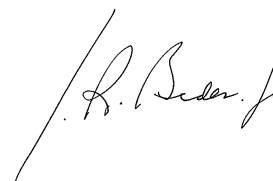
On this National Maritime Day, we honor the brave merchant mariners who provide critical support to our troops stationed in warzones, and who are essential to our Nation's economic success. Recognizing the contributions of our merchant mariners, my Administration strongly supports protecting

the Jones Act—the cornerstone of our domestic maritime industry. We must protect those who protect our country.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as “National Maritime Day” to commemorate the first transoceanic voyage by a steamship in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

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 May 22, 2021, as National Maritime Day. I call upon all Americans to observe this day and to celebrate with appropriate programs, ceremonies, and activities.

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

A handwritten signature in dark ink, appearing to read "J. R. Biden Jr.", with a long, sweeping horizontal line extending to the left.

Rules and Regulations

Federal Register

Vol. 86, No. 102

Friday, May 28, 2021

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0169]

RIN 1625–AA08

Special Local Regulation; Marine Events; Annual Bayview Mackinac Race, Lake Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the annual Bayview Yacht Club Port Huron to Mackinac Race, from 10 a.m. to 3 p.m. on July 24, 2021. This special local regulation is necessary to safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. During this enforcement period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (PATCOM).

DATES: The regulation in 33 CFR 100.902 will be enforced from 10 a.m. until 3 p.m. on July 24, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Tracy Girard, Waterway Management Division, Coast Guard Sector Detroit, 110 Mt. Elliott Street, Detroit, MI at (313) 568–9564 or Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Annual Bayview Mackinac Race found in 33 CFR 100.902 from 10 a.m. until 3 p.m. on July 24, 2021. This Notice of Enforcement applies to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042°58'47" N, longitude 082°26'0" W; then easterly to

latitude 042°58'24" N, longitude 082°24'47" W; then northward along the International Boundary to latitude 043°02'48" N, longitude 082°23'47" W; then westerly to the shoreline at approximate location latitude 043°02'48" N, longitude 082°26'48" W; then southward along the U.S. shoreline to latitude 042°58'54" N, longitude 082°26'01" W; then back to the beginning [DATUM: NAD 83].

In order to ensure the safety of spectators and participating vessels, the Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels permitted to transit the regulated area will operate at no wake speed and in a manner which will not endanger participants in the event or any other craft. The rules contained above shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

This document is issued under the authority of 33 CFR 100.902 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port or PATCOM determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 14, 2021.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2021–11285 Filed 5–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0309]

Safety Zones; Recurring Events in Captain of the Port Duluth—LaPointe Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the LaPointe Fireworks in LaPointe, WI from 8 p.m. through 10:30 p.m. on July 4, 2021. This action is necessary to protect participants and spectators during the LaPointe Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 8 p.m. through 10:30 p.m. on July 4, 2021, for the LaPointe Fireworks safety zone, § 165.943(a)(6).

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST2 Jeremy Davis, telephone (218) 725–3823, email DuluthWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual LaPointe Fireworks in 33 CFR 165.943(a)(6) from 8 p.m. through 10:30 p.m. on July 4, 2021 on all waters of Lake Superior bounded by the arc of a circle with a 350-foot radius from the fireworks launch site with its center in position 46°46'40" N, 090°47'22" W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: May 24, 2021.

F.M. Smith,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2021–11288 Filed 5–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AR05

Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program

AGENCY: Department of Veterans Affairs

ACTION: Final rule

SUMMARY: The Department of Veterans Affairs (VA) is establishing through this final rule the COVID-19 Veterans Assistance Partial Claim Payment program (COVID-VAPCP), a temporary program to help veterans return to making normal loan payments on a VA-guaranteed loan (guaranteed loan) after exiting a forbearance for financial hardship due, directly or indirectly, to the COVID-19 national emergency.

DATES: This rule is effective July 27, 2021.

FOR FURTHER INFORMATION CONTACT:

Andrew Trevayne, Assistant Director, Loan Property and Management, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On December 9, 2020, VA published a proposed rule to establish a temporary program to assist veterans with VA-guaranteed home loans who request forbearance under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹ The public comment period for the proposed rule closed on January 8, 2021.

Comments and questions submitted by veterans, lenders, servicers, consumer groups, and trade associations were generally supportive of VA's initiative. However, commenters raised significant concerns about certain program features. Most notably, industry and consumer group commenters indicated that the COVID-VAPCP differed from the Federal Housing Administration's (FHA's) COVID-19 Standalone Partial Claim program. According to the commenters, these differences made the COVID-VAPCP less helpful to veterans and less workable for servicers. We read the general theme of the commenters' recommendations to be that VA should finalize the rule with revisions that would make the COVID-VAPCP more

similar to FHA's COVID-19 Standalone Partial Claim program.

In response to these comments, VA has made several revisions to the COVID-VAPCP in this final rule. Those changes, along with VA's responses to the public comments (including VA's responses where VA determined changes were not necessary), are described below.

I. Summary of Key Changes to the Final Rule

As discussed in the proposed rule, the COVID-VAPCP is a temporary program that establishes a partial claim option to aid veterans with VA-guaranteed loans who suffer financial hardship due to the COVID-19 national emergency. In developing this program, VA modeled certain features after existing partial claim programs already available to borrowers with other federally backed mortgages; specifically, those insured or guaranteed by the U.S. Department of Housing and Urban Development's (HUD) FHA and the U.S. Department of Agriculture's (USDA) Rural Housing Service. VA's final rule aligns even more closely with both FHA's and USDA's partial claim programs.

Significant changes to the final rule in response to public comments include the following: (1) The partial claim maximum limit suggested by the proposed rule is doubled from 15 percent of the unpaid principal balance of the guaranteed loan as of the date the veteran entered into a COVID-19 forbearance, to 30 percent of such balance; (2) the proposed requirement that the veteran repay the partial claim within 120 months is eliminated; (3) the proposed requirement that VA charge interest on the new loan is eliminated, meaning the COVID-VAPCP loan is a no-interest loan for the veteran; (4) the proposed requirement that servicers complete a financial evaluation of the veteran is eliminated; (5) the timeframe for servicers to submit a partial claim payment request to VA is increased from 90 to 120 days; and (6) the proposed requirement that the COVID-VAPCP be the option of last resort is eliminated, meaning that servicers can use the partial claim payment option, even if other home retention options are feasible, provided that the partial claim payment option is in the veteran's financial interest.

As the COVID-19 national emergency and the CARES Act pass their one-year anniversaries, VA stakeholders continue to confront decisions that have far-reaching consequences. The COVID-19 pandemic is still causing severe illness, death, and disruption in the economy on a significant scale. These effects have

resulted in continued financial difficulties for many veterans. Veterans who requested forbearances under the CARES Act in the first half of 2020 are facing the reality of exiting forbearance with significant forbore indebtedness while still dealing with the pandemic. Other veterans who have managed to continue paying their mortgages are now deciding whether to request forbearance for the first time as the COVID-19 national emergency enters its second year.

VA's partial claim assistance may well be the determining factor for certain veterans, affecting the extent to which they can recover financially from the crisis. Similarly, servicers are evaluating their liquidity positions and other factors to determine how to make the advances necessary for investor requirements. Some servicers may even be questioning whether they can stay afloat, which ultimately harms not just the servicer, but also the veterans whose guaranteed loans are being serviced.

The changes adopted by VA in this final rule are necessary to address the problems mentioned above. VA's COVID-VAPCP creates a "soft landing" for certain veterans, enabling them to return to their regularly scheduled monthly payments without suffering another financial shock. The program also provides a lifeline for certain servicers, thereby mitigating the risk that veterans will be left without the benefit of prudent loan servicing.

II. Discussion of Comments and Final Rule

VA received eighteen comments in response to its proposed rule. Of those comments, twelve were from individuals and five were from lenders, servicers, trade organizations, or consumer groups. VA also received one comment co-signed by 27 national- and state-level trade and consumer organizations. Three commenters that joined the joint trade and consumer group comment also submitted their own comment, and VA has arranged those with the five other organizational comments. To the extent feasible, issues raised by commenters have been summarized and grouped together by similar topic.

A. General Comments

VA received ten comments from individuals expressing generalized support for the proposed rule. Of those, four comments were from individuals interested in participating in the program once it is finalized. Additionally, VA received one comment expressing negative sentiments about

¹ See 85 FR 79142 (Dec. 9, 2020); Public Law 116-136 (Mar. 27, 2020).

the proposed rule, though no specific complaints were provided.

B. Alignment With Other Federal Housing Agency Programs

As discussed above, a common recommendation was that VA adopt changes in the final rule to align the COVID-VAPCP with other federal housing agencies' programs. Those include programs administered by FHA, USDA, and the Federal Housing Finance Agency (FHFA).² Four commenters, including the joint trade and consumer group, expressed a preference that VA revise the COVID-VAPCP to be more similar to FHA's COVID-19 Standalone Partial Claim program. These commenters noted that aligning the COVID-VAPCP with similar programs offered by other agencies would be in the best interest of veterans, servicers, and VA. One commenter stated that the program, without such alignment, would likely cause "substantial and unnecessary mortgage re-defaults and foreclosure."

In recommending that VA align the COVID-VAPCP with other federal partial claim programs, commenters focused on three specific program features.

1. *Repayment Terms of the Partial Claim Payment (38 CFR 36.4805)*: One commenter noted that VA should not charge 1.00 percent interest on the partial claim loan, as the financial situation faced by veterans during the COVID-19 national emergency is not due to the individual's own fault. Another commenter questioned VA's characterization of the repayment terms, including the 1.00 percent interest rate proposed by VA, as being "extremely favorable to veterans," given that FHA and USDA partial claim programs do not charge interest (or fees) on partial claims. That commenter also noted that VA did not explain why it was necessary to charge interest on the partial claim payment. Finally, the commenter questioned whether the repayment terms, including the 1.00 percent interest rate proposed by VA, were even permissible in states with prohibitions against negative amortization loans.

Regarding VA's proposed ten-year repayment term with a five-year payment deferral, two commenters asserted that this program feature would cause substantial increases in veterans' monthly mortgage payments when repayment to VA began in year six, and that such increases would likely lead to

payment shock and redefault. Both commenters pointed out that VA's own example in the proposed rule resulted in a 20 percent monthly payment increase at year six. Citing lessons learned from the 2008 financial crisis, these commenters noted that the repayment structure utilized by FHA and USDA avoids payment shock.

VA Response: VA agrees with comments opposing the proposed 1.00 percent interest rate on the partial claim loan and the ten-year repayment term. VA believes that veterans who need assistance recovering from the economic effects of the COVID-19 pandemic should not be charged interest and should not face the risk of payment shock. As discussed in the section-by-section analysis below, VA is therefore adopting repayment terms similar to FHA and USDA, wherein the veteran will not be charged any fees or interest for the subordinate loan established under the COVID-VAPCP. Repayment in full is required immediately upon the veteran's transfer of title to the property or the refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated.

The veteran may make payments for the indebtedness, in whole or in part, without charge or penalty, a policy that carries over from VA's proposed rule and is consistent with FHA and USDA policies.

2. *Borrower Certifications and Residual Income Requirements (38 CFR 36.4803)*: Five commenters, including the joint trade and consumer group, suggested that VA's proposal contained unnecessary documentation requirements, including an application form, borrower and servicer certifications, and financial documentation requirements. One commenter proposed that VA require no documentation if the veteran was either current or less than 30 days past due on March 1, 2020. Two commenters specifically questioned VA's proposed requirement that servicers certify as to a veteran's monthly residual income being adequate as described in 38 CFR 36.4340(e). Both commenters noted that if the purpose of the requirement is to assess the veteran's ability to afford the additional partial claim payments, a current assessment is unlikely to provide any benefit because the veteran's financial situation is likely to change over the next five years while payments on the subordinate loan are deferred.

Similarly, three commenters pointed out that FHA, USDA, and the GSEs all have more streamlined documentation requirements that simplify access for

borrowers and ensure relief is delivered timely. One commenter pointed out that VA's proposed rule creates "at least six discrete steps for a veteran to successfully qualify for a partial claim" which, in some cases, was more rigorous than existing VA loss-mitigation options. The commenter noted that the cumulative effect of these steps could "slow or suppress the partial claim enrollment process for veterans." Additionally, the commenter highlighted that at least three requirements (financial evaluation, new borrower disclosures due to the interest being charged, and an application form) are not included in any other federal housing agency's COVID-19 loss mitigation program.

All three commenters noted that VA should follow the more streamlined options presented by the other federal agencies. One commenter also highlighted that loss mitigation offered at the outset of the Great Recession required large amounts of paperwork and "delayed relief and sometimes prevented borrowers from resolving their delinquencies." That same commenter noted that enrolling in forbearance required no documentation, and specifically recommended that the COVID-VAPCP take advantage of the relaxed regulatory requirements announced by the Consumer Financial Protection Bureau (CFPB) in a June 2020 interim final rule.³ The commenter asserted that VA should find a way to allow servicers to offer a partial claim option without completing an evaluation of all loss mitigation options available to the borrower based on a complete loss mitigation application (including financial information). The commenter stated that such flexibility is authorized by amendments made to CFPB's Regulation X.

VA Response: While VA cannot comment on the applicability of the CFPB's recent amendments to Regulation X, VA does agree with commenters that requirements in VA's proposed rule, namely, the certifications and residual income evaluation, are too stringent. VA notes that it did not intend to dissuade participation in the program, nor did it seek to create unnecessary paperwork for borrowers and servicers that could hinder relief. Rather, in requiring both veterans and servicers to certify as to the veteran's financial situation, VA was attempting to ensure that veterans would not be put in a position where they would be

² The FHFA serves as conservator for the Government Sponsored Enterprises (GSEs) Freddie Mac and Fannie Mae.

³ VA believes the commenter was referencing the CFPB rule found at the following link: https://files.consumerfinance.gov/f/documents/cfpb_interim-final-rule_respa_covid-19-related-loss-mitigation-options.pdf (last accessed May 1, 2021).

unable to afford the COVID-VAPCP loan. Upon reviewing the comments, and in consideration of VA's decision to eliminate interest charges and the ten-year repayment term, VA is finalizing the rule with requirements more aligned with FHA's COVID-19 Standalone Partial Claim program. As described below in the section-by-section analysis, VA is eliminating the financial certification requirement and will allow servicers to use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest.

As for the requirement that veterans certify their occupancy, VA notes that, much like FHA's COVID-19 Standalone Partial Claim program for FHA borrowers, one purpose of VA's COVID-VAPCP is to ensure that veterans remain safely housed during the pandemic. To help achieve this purpose, VA will still require that a veteran who participates in the COVID-VAPCP occupy, as the veteran's residence, the property securing the guaranteed loan for which the partial claim is requested. However, VA has determined that it is sufficient for the servicer to assess this requirement without collecting a certification from the veteran.

Given VA's elimination of the certification requirements mentioned above, VA finds that the proposed application form is no longer necessary. With the exception of the certifications, most of the information collected and presented on the form will be captured on the note prepared by the servicer and presented to the veteran. VA has further determined that those data elements from the form that may not be included in the note, such as the date of the veteran's next monthly mortgage payment to the servicer, are not critical to the rule and will likely be communicated from the servicer to the veteran in other ways.

3. Maximum Amount of Assistance (38 CFR 36.4805(b)): Two commenters expressed concern over VA's decision to limit assistance under the COVID-VAPCP to 15 percent of the unpaid principal balance (UPB) of the guaranteed loan at the time the veteran entered forbearance. Both commenters noted that FHA's and USDA's partial claim programs allow for assistance up to 30 percent of the UPB. One commenter further noted that, in calculating whether a 15 percent UPB cap would provide sufficient room for servicers to bring most guaranteed loans current, VA failed to consider the effect on older loans with smaller outstanding balances. Both commenters

recommended that VA consider mirroring FHA's and USDA's 30 percent UPB caps; one commenter offered an alternative recommendation that VA consider eliminating the cap for low balance loans.

VA Response: VA agrees with the commenters who recommended mirroring FHA's and USDA's 30 percent UPB caps. While an increase to a maximum UPB cap of 30 percent will not enable every loan currently under forbearance to meet the requirements for the COVID-VAPCP, this change in the final rule will allow approximately 9,000 additional loans to participate (assuming other requirements such as occupancy and ability to resume regular monthly mortgage payments are met), with minimal additional financial risk to the Government.

The increase to the UPB cap does not affect the unique option that VA included in its proposed rule, which would allow for a veteran to make an optional payment or for a servicer to waive amounts that would otherwise prevent a veteran from participating. Even with VA adopting a higher UPB cap in the final rule, VA is maintaining this feature of the program, as it could help more veterans be able to receive the assistance, at no additional cost to the program.

VA declines at this time to increase the maximum amount of assistance beyond the 30 percent UPB cap or to eliminate the cap for smaller balance loans. This rulemaking marks the first time that VA has administered a partial claim program. VA firmly believes a new partial claim program is necessary to help veterans, but it constitutes a fundamental shift for VA and all stakeholders—veterans, the lending and servicing industry, investors who provide liquidity to the industry, Congress, and other federal agencies. Now VA is, in this final rule notice and before the program is underway, already doubling the proposed UPB cap to put it on par with the 30 percent UPB cap in both FHA's and USDA's partial claim programs. VA notes, too, that those caps are statutory, and Congress has not adjusted them in response to the national emergency.⁴ Since VA has never administered a partial claim program and Congress has limited FHA's and USDA's partial claims to 30 percent UPB, VA does not have enough information at this time to accurately forecast the range of potential outcomes of pushing beyond the 30 percent cap. Furthermore, VA believes that if VA were to decide to push such a boundary,

introduction of the concept would be better suited to an additional rulemaking where the public could provide additional input.

C. Expand Coverage to Loans That Became Delinquent Before March 1, 2020 (38 CFR 36.4803(a))

One commenter requested that VA consider eliminating the requirement proposed in 38 CFR 36.4803(a) that the guaranteed loan was, on March 1, 2020, either current or less than 30 days past due. The commenter noted that delinquency status was not a factor in section 4022 of the CARES Act as to whether a borrower could request forbearance; therefore, "the Moral and Ethical right thing to do is to allow (ALL) Veterans experiencing mortgage financial hardships to take advantage of [the COVID-VAPCP]."

Another commenter referred to the delinquency issue in response to one of VA's specific questions: Whether information collected as part of a complete loss-mitigation evaluation would be adequate to evaluate a borrower's residual income under 38 CFR 36.4340(e).⁵ The commenter suggested that VA require minimal documentation from veterans with loans that were delinquent on March 1, 2020. The commenter defined "minimal documentation" as proof of 30 days of income and an acceptable housing debt-to-income ratio. Regarding borrowers with loans that were, on March 1, 2020, current or less than 30 days past due, the commenter recommended VA require no documentation.

VA Response: While VA is committed to ensuring that assistance under this temporary program is widely available to veterans, VA declines to expand coverage to include loans that were not current or less than 30 days past due on March 1, 2020. As discussed in the proposed rule, the COVID-VAPCP is designed to be a temporary assistance program that provides a "soft landing" for veterans who, but for the COVID-19 national emergency, would not be having difficulty paying their mortgage.⁶ To ensure that VA can target relief under the COVID-VAPCP to those veterans, VA believes it is necessary to maintain the requirement that the status of the loan on March 1, 2020, the date the COVID-19 national emergency became effective, be current or less than 30 days past due.

VA acknowledges that many veterans who were experiencing financial hardship pre-pandemic continued to

⁴ See 12 U.S.C. 1715u(b)(2)(A); see also 42 U.S.C. 1472(h)(14)(A).

⁵ See question 2, 85 FR 79142, 79153 (Dec. 9, 2020).

⁶ 85 FR 79142 (Dec. 9, 2020).

experience hardship and that, in some cases, their hardship may have worsened as a result of the pandemic. VA has provided alternative approaches to assist such veterans in retaining their homes. These include relaxed regulatory requirements to help veterans whose loans were already delinquent take advantage of historically low interest rates and refinance their mortgage, often times with a lower, more affordable, monthly mortgage payment.⁷ VA also issued guidance authorizing servicers to consider other VA home retention options.⁸ Finally, VA temporarily waived regulatory requirements prohibiting balloon payments to enable servicers to offer deferment as another home retention option for veterans exiting forbearance.⁹

D. Partial Claim Payment as Last Resort (38 CFR 36.4804)

Five commenters, including the joint trade and consumer group, expressed confusion with VA's proposal that servicers treat the partial claim payment as a last resort and recommended changes in the final rule. Several commenters requested that VA clarify where the partial claim payment fell in a "waterfall" of home retention options. Two commenters noted that it was not clear from VA's proposed rule how servicers would know that the partial claim was being offered as a last resort. In this regard, the commenters pointed to language in the proposed rule that suggested a servicer may elect to utilize the partial claim even if the veteran qualifies for a loan modification. Three commenters, including the two just mentioned, felt that a partial claim payment should be evaluated on equal footing with other home retention options, consistent with current VA servicing policies, and be utilized when "clearly in [the veteran's] best financial interest."

One commenter noted that it was not clear whether proposed language referencing "all possible loss-mitigation options" included the deferment loss-mitigation option referenced by VA Circular 26-20-33.¹⁰ The commenter

requested that VA clarify in the final rule whether deferment was to be considered before a partial claim payment. Another commenter was concerned that it was unclear from the proposed rule whether a servicer may refuse to offer a partial claim payment if a veteran specifically requested it and the servicer determined another loss mitigation option was available. Finally, one commenter recommended that VA follow FHA and offer a streamlined partial claim option as the first step in a waterfall of foreclosure alternatives.

VA Response: VA has determined that changes in the final rule are necessary to clarify how VA expects servicers to offer the COVID-VAPCP. VA also agrees that referencing the partial claim payment option as a last resort might lead to an unintended restriction on program participation.

Generally, VA expects servicers to provide veterans with home retention options that are in the veteran's financial interest. To ensure that VA can assist as many veterans as possible in retaining their homes and recovering from the pandemic, VA is modifying the final rule such that the COVID-VAPCP will no longer be characterized as an option of last resort.

Commenters correctly noted that VA has a longstanding history of not prescribing a required "waterfall" of home retention options. VA has instead advised of VA's preferred order of consideration for standard home retention options.¹¹ As explained in the proposed rule, one reason supporting this policy is that, in VA's program, lenders, servicers, or other entities that own the loan (loan holders) often bear significantly more financial risk than the Government.¹² Also, VA recognizes that individual circumstances may lead to "out of the ordinary" considerations.¹³

In keeping with this longstanding policy, VA declines to require servicers to offer a partial claim payment to veterans, particularly as part of a prescribed waterfall of home retention options. At this stage, VA does not have enough information to warrant the dismantling of a model that achieved one of the lowest foreclosure rates on the market for most of the past decade (even with most veterans not making a down payment). VA is also concerned that mandating the partial claim option could increase upfront costs for some

servicers, which could in turn impede them from helping the veterans they would otherwise be able to serve. VA understands this approach may differ from both FHA's and USDA's partial claim programs, but VA also notes that those agencies and their servicers have been working with more prescriptive waterfalls for quite some time, as servicers have less "skin-in-the-game" in those agencies' programs than they do in VA's.

VA is amending the final rule to clarify that a servicer may consider a partial claim option in the same way that a servicer may consider any of VA's other home retention options. VA is also adopting changes to the final rule to clarify that servicers may elect to offer the partial claim payment instead of other options. While VA's amendments promote a more streamlined application process, VA wants to ensure that servicers are still keeping veterans' financial interests in mind. Therefore, VA is also adopting changes to the final rule to remind servicers that the COVID-VAPCP should only be offered if the option is in the veteran's financial interest.

Servicers that participate in VA's home loan program have significant experience determining what home retention option(s) to consider and offer when assisting veterans whose loans are in default. Through the changes in this final rule, VA is empowering servicers to continue making decisions that align with both veterans' interests and the capabilities of a servicer's business model. VA is dispensing with the last resort characterization and will not, for example, require servicers to keep a written record of the servicer's justification that the partial claim option was superior to each and every other home retention option. However, a servicer's decision to utilize the partial claim option will be subject to VA's oversight, audit, and review. Furthermore, and with consideration of commenters' reflections on home retention policies and the Great Recession, VA believes that it is crucial to allow servicers flexibility to use informed business judgment to determine whether a veteran is well suited for participation in the COVID-VAPCP, without the burdens of a formal evaluation or consideration process. As such, if a veteran exiting forbearance requests a partial claim payment, the servicer may be able to immediately proceed to executing the partial claim payment after determining that the veteran's case meets program requirements. Similarly, servicers will be able to evaluate their existing forbearance portfolios to determine

⁷ VA Circular 26-20-25, *Impact of CARES Act Forbearance on VA Purchase and Refinance Transactions*, (June 30, 2020), https://vbaw.vba.va.gov/HOMELOANS/docs/hot_topics/26-20-25.pdf.

⁸ VA Circular 26-20-12, *Extended Relief Under the CARES Act for those Affected by COVID-19*, (Apr. 8, 2020), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_12.pdf.

⁹ VA Circular 26-20-33, *Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases*, (Sept. 14, 2020), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_33.pdf.

¹⁰ VA Circular 26-20-33, *Deferment as a COVID-19 Loss Mitigation Option for CARES Act*

Forbearance Cases, (Sept. 14, 2020), https://vbaw.vba.va.gov/HOMELOANS/docs/hot_topics/26_20_33.pdf.

¹¹ 38 CFR 36.4319(a).

¹² 85 FR 79142, 79147 (Dec. 9, 2020).

¹³ 38 CFR 36.4319(a).

whether the COVID-VAPCP can assist borrowers in bringing their loans current when the forbearance periods end.

To illustrate: A veteran is about to exit a 360-day COVID-19 forbearance period. In working with the veteran, the servicer learns that, but for having to repay the COVID indebtedness, the veteran's income would allow the veteran to return to the normal monthly payment. Assuming there were no other prohibitive aspects of the case, the COVID-VAPCP would seem to be in the veteran's financial interest. VA would not expect the servicer to expend resources on evaluating all other home retention options, solely to determine that the COVID-VAPCP was the option of last resort. Similarly, because the COVID-VAPCP would be in the veteran's financial interest, offering a loan modification to "see how things go" would likely not be the optimal outcome for the veteran because even if the modification succeeds, the COVID-19 indebtedness would be capitalized into the loan modification, resulting in thousands of dollars of additional interest being charged to the veteran.

If, however, the servicer learns at the outset that a veteran's income could no longer support a return to the monthly payment, even with the COVID-VAPCP assistance covering the COVID-19 indebtedness, it could be difficult to show how offering the COVID-VAPCP would be in the veteran's financial interest. This would be especially apparent if the veteran could retain the home through a modification to the interest rate and, for example, a principal reduction from the infusion of HAF¹⁴ funds.

In other words, while VA has not prescribed a waterfall of home retention options, in cases where the servicer determines that the partial claim option is an optimal method, the servicer should pursue it, rather than another option. This will help shield the veteran from delaying the veteran's financial recovery and help prevent the expensive and labor-intensive burdens that could be posed by an unnecessary series of home retention strategies.

In sum, VA's final rule clarifies that the COVID-VAPCP is available in cases where other home retention options are feasible, ensures a more streamlined application process, and provides

flexibility such that servicers can implement home retention options that fit within their business capabilities. VA believes that such changes are consistent with VA's longstanding servicing regulations and policies and will enable more borrowers to utilize this temporary assistance program while mitigating burdens to veterans and servicers.

(*Note:* VA continues to explore ways to help veterans as they exit their COVID-19 forbearances and as foreclosure/eviction moratoriums end. VA expects the upcoming weeks to provide critical information in evaluating the COVID-VAPCP and additional measures to help veterans. In fact, VA anticipates additional rulemaking will be urgently necessary to keep pace with the evolving financial needs of veterans.)

E. Expiration of the COVID-VAPCP (38 CFR 36.4809)

Three commenters, including the joint trade and consumer group, did not agree with VA's proposed COVID-VAPCP expiration date of September 9, 2021. All three commenters noted that current information suggests that many veterans will remain in forbearance beyond September 9, 2021. The commenters suggested that if VA does not extend the sunset date, such borrowers would not be able to receive assistance. Commenters recommended that VA consider changes to the final rule that would ensure all veterans who enter a COVID-19 forbearance can take advantage of the program. One commenter specifically requested that VA commit to accepting partial claim requests for at least 15 months beyond the date the COVID-19 national emergency ends. The commenter noted that this timeline would allow veterans to utilize up to 12 months of forbearance and provide an additional 90 days to complete the paperwork required for a partial claim. This commenter also requested that VA consider changing the permissive language in proposed § 36.4809(b) from "the Secretary may still accept a request for a partial claim payment" to "the Secretary shall accept a request for a partial claim payment," thereby requiring the Secretary to accept a request within 90 days of a veteran exiting a COVID-19 forbearance.

VA Response: VA agrees in part. VA believes that the permissive element of proposed § 36.4809(b) should instead be mandatory upon the Secretary. If the COVID-19 national emergency ends while a veteran is under a COVID-19 forbearance, the permissive language in the proposed rule could lead the veteran to question whether it is necessary to

cut short the forbearance period in order to take advantage of the COVID-VAPCP. This is not an outcome VA intended. Accordingly, VA has revised this final rule to require the Secretary to accept a request for a partial claim payment if it is submitted timely.

VA notes that acceptance of a request for a partial claim payment is not synonymous with approval of that request. Thus, this change only requires the Secretary to accept, but not necessarily approve, a request that is received before the requisite deadline. In other words, even though this final rule prohibits the Secretary from refusing to consider a request that is submitted before the deadline, timely submission is not tantamount to approval.

VA also agrees with commenters that the September 9, 2021 sunset date should be extended, given the potential for COVID-19 forbearances extending beyond that date. VA is adjusting the sunset date in the final rule to align with the expectation that no veteran will be in a COVID-19 forbearance after June 30, 2022.

On February 16, 2021, VA published guidance stating that VA expects servicers to approve initial COVID-19 forbearances if the request is made on or before June 30, 2021. VA's guidance also stated that certain COVID-19 forbearance periods may extend through June 30, 2022. Additionally, the guidance stated that VA expects that, if needed, a veteran may request, and the servicer will approve, up to two additional three-month forbearance periods, after twelve months of COVID-19 forbearance.¹⁵ VA also stated that neither of the two additional three-month forbearance periods may extend beyond December 31, 2021. These timeframes align with both FHA's and USDA's COVID-19 forbearance guidance.¹⁶

Considering the factors mentioned above, and that VA is extending the timeframe during which a servicer can request a partial claim payment from 90

¹⁵ VA Circular 26-21-04. *Approving Forbearance Requests for Veterans Affected by COVID-19*, (Feb. 16, 2021), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_21_04.pdf.

¹⁶ See HUD Mortgage Letter 2021-05. *Extensions of Single Family Foreclosure and Eviction Moratorium, Start Date of COVID-19 Initial Forbearance, and HECM Extension Period; Expansion of COVID-19 Loss Mitigation Options*, (Feb. 16, 2021), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-05hsgml.pdf>. See also USDA Extends Evictions and Foreclosure Moratorium to June 30, 2021 and Provides Additional Guidance for Servicing Loans Impacted by COVID-19, (Feb. 16, 2021), <https://www.usda.gov/media/press-releases/2021/02/16/biden-administration-announces-another-foreclosure-moratorium-and>.

¹⁴ HAF is the Homeowner Assistance Fund, which provides States with funding to provide relief to our country's most vulnerable homeowners. For more information, visit <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund> (last accessed May 1, 2021).

days to 120 days post-forbearance (as explained below), this final rule notice sets a new sunset date of October 28, 2022. In establishing this date, VA notes that June 30, 2022 is the last date on which VA expects a veteran to exit a COVID-19 forbearance. Given that a servicer will now have 120 days from the date a veteran exits a COVID-19 forbearance to request a partial claim, October 28, 2022 will be the deadline for servicers to request a partial claim. VA notes that if there are additional extensions of forbearance periods in VA's home loan programs, VA may consider a new rulemaking to adjust the sunset date.

VA does not agree at this time to commit to accepting partial claim requests for at least 15 months beyond the date the COVID-19 national emergency ends. As the proposed rule explained, the COVID-VAPCP is intended as a temporary program.¹⁷ Thus, it is reasonable for VA to set a program sunset date that, at the time of this writing, aligns with federal guidance signaling that COVID-19 forbearances should end by June 30, 2022. Also under that guidance, servicers must assist veterans in bringing their loans current as they exit COVID-19 forbearances. While VA, the servicer, and the veteran may undertake certain actions after the 120-day deadline, the servicer will need to make a decision about what home retention option is in the veteran's financial interest close to the time when the veteran's forbearance ends. Such actions will be necessary to assist veterans regardless of whether the COVID-19 national emergency is still in effect.

F. 90-Day Timeline To Submit Partial Claim Payment Request (38 CFR 36.4805(a))

In the proposed rule, VA requested comments as to whether “the servicer’s 90-day deadline as proposed by § 36.4805 to submit the request for partial claim payment [is] reasonable.”¹⁸ VA also requested comments on whether there is a more reasonable timeframe.

Only three commenters specifically responded to VA’s question. One commenter suggested that servicers should be given 12 months after the end of the COVID-19 national emergency within which to complete an evaluation of the veteran’s post-forbearance options and submit a request for partial claim payment. The commenter noted that servicers will need “unquantifiable additional time and resources” to

address the significant numbers of borrowers exiting forbearance in 2021 and that time would be needed to “engage in thoughtful review of every individual’s financial situation and identify the most suitable path to cure.”

Another commenter indicated that a longer time period could be necessary due to unforeseen delays in communicating with the veteran or in trying other loss-mitigation options first, such as a trial loan modification. In consideration of these realities, the commenter suggested that VA require servicers to request a partial claim “90 days from the final loss mitigation option being fully evaluated prior to consideration of COVID-VAPCP.”

The third commenter indicated that the 90-day timeframe was too short considering the burdens associated with the financial evaluation and additional paperwork and certifications. The commenter suggested that 180 days was more reasonable, especially if VA chose not to streamline the COVID-VAPCP to mirror FHA’s less burdensome program.

Additionally, other commenters communicated general concerns with the significant operational costs and delay associated with executing VA’s proposed rule. As previously discussed, several commenters were concerned that participating in the COVID-VAPCP was, in most cases, more work for servicers than other traditional VA home retention options. Such comments did not specifically address or mention VA’s proposed 90-day timeframe for servicers to execute and submit a request for partial claim payment. However, the commenters implied that VA’s timeframe was not feasible given the increased burden associated with the COVID-VAPCP.

VA Response: VA agrees in part and is adjusting the requirement that servicers execute and submit a request for partial claim payment. Rather than the requirement being not later than 90 days after the veteran exits the COVID-19 forbearance, VA is extending it to not later than 120 days after the veteran exits the COVID-19 forbearance. FHA recently increased from 90 days to 120 days the timeframe in which a servicer must complete a partial claim option for borrowers affected by COVID-19.¹⁹ Because VA has streamlined the process to align more squarely with FHA, VA believes that servicers should have a

similar timeframe to request a partial claim payment from VA.

As to the suggestion that VA should allow servicers to submit a request for up to 12 months after the national emergency ends, VA believes that the end of the veteran’s forbearance period, as opposed to the end of the national emergency, is the more appropriate starting point. As mentioned above, VA believes the key is to act quickly for veterans who are exiting their COVID-19 forbearances. Moreover, VA acknowledges that servicers will be processing many cases where borrowers exit forbearance in the coming year. This upcoming influx of cases is one of the primary reasons that VA is streamlining the COVID-VAPCP process. VA believes that streamlining the process will lessen servicers’ workload in evaluating, executing, and requesting a partial claim payment.

Regarding the comment that VA start the 90-day period from the date the servicer evaluates “the final loss mitigation option . . . [before] consideration of [the] COVID-VAPCP,” it appears that the commenter may have understood the proposed rulemaking’s last resort characterization as a requirement that servicers should attempt several home retention options (and that all such options must fail) before servicers can resort to the COVID-VAPCP.²⁰

VA did not intend to imply that servicers should test other home retention options and only arrive at the COVID-VAPCP if such measures fail. Regardless, as explained in this final rule notice, VA is extending the submission timeframe (from 90 to 120 days) and is eliminating the last resort characterization, allowing instead for servicers to consider a partial claim option in the same way a servicer may consider any of VA’s other home retention options. VA believes these changes have addressed the commenter’s concerns.

G. Taxes and Insurance Premiums (38 CFR 36.4805)

In the proposed rule, VA requested comments regarding VA’s proposal to limit inclusion of taxes and/or insurance amounts due and paid by the servicer, on the veteran’s behalf, in the case of a veteran who pays real estate taxes and/or insurance premiums directly to a tax authority or insurance

¹⁹ See HUD Mortgagee Letter 2021–05, *Extension of Single Family Foreclosure and Eviction Moratorium, Start Date of COVID-19 Initial Forbearance, and HECM Extension Period; Expansion of COVID-19 Loss Mitigation Options*, (Feb. 16, 2021), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-05hsgml.pdf>.

²⁰ The commenter explained that, “. . . some options could require a borrower to make trial payments for a 90-day period before finalizing a modification.” If the servicer must wait out the trial period to ensure that the COVID-VAPCP is indeed the option of last resort, it places “both the Veteran and the servicer in a difficult situation.”

¹⁷ 85 FR 79142 (Dec. 9, 2020).

¹⁸ 85 FR 79142, 79154 (Dec. 9, 2020).

provider.²¹ VA expressed interest in determining whether the partial claim payment should include amounts corresponding to what will be due for such items, where the bills were not due and payable during the COVID-19 forbearance. VA also sought input regarding how best to calculate and disburse such amounts, as well as how to conduct oversight to ensure the monies were directed to the appropriate tax authority or insurance provider.

VA received three comments related to the issue of real estate tax and insurance payments. One commenter supported VA's proposal to include in the partial claim amount certain scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, noting that such a policy was also consistent with FHA's COVID-19 Standalone Partial Claim. The commenter did not specifically address whether VA should include scheduled but missed real estate taxes and insurance premiums in cases where the guaranteed loan documents do not provide for monthly escrowing.

Another commenter suggested that, if the veteran has remitted timely payments of real estate taxes and/or property insurance premiums directly to the tax authority and insurance provider, the partial claim payment should only include principal and interest. However, the commenter recommended that, if the veteran fell behind on such payments or such payments were not due during the forbearance period, the partial claim payment should include such real estate taxes and insurance premiums, or a pro rata portion of such amounts. The commenter further recommended that VA create an escrow account for holding and disbursing these funds on behalf of the veteran "in a manner that complies with the provisions of RESPA's implementing Regulation X."

A third commenter, acknowledged that "only a small percentage of Veteran homeowners directly pay taxes and insurance." However, to account for these cases, the commenter recommended that prorated amounts for missed taxes and insurance premiums should be included in the partial claim payment regardless of whether the servicer remitted payment on the veteran's behalf during the COVID-19 forbearance. The commenter also opined that requiring the servicer to manage a temporary escrow account for such unpaid items would be too complex. The commenter suggested that the funds should instead be sent directly to veterans, provided that the

veterans sign a document acknowledging that the funds are to be used to satisfy the delinquent taxes and insurance premiums.

VA Response: The varied responses to VA's question demonstrate the complexities associated with assisting veterans who do not utilize an escrow account to pay real estate taxes and/or insurance premiums. After considering the comments received, and given that less than one percent of guaranteed loans do not provide for escrowing, VA declines to change how the partial claim payment will be calculated in the final rule. VA believes that implementing a requirement for temporary escrow accounts would be overly burdensome when measured against the nominal improvement such a provision would bring to the COVID-VAPCP. VA is concerned that the burden associated with establishing, maintaining, adjusting, and closing temporary escrow accounts, would discourage servicers from participating in the program. VA believes that such a requirement is not necessary to help veterans whose loan documents do not provide for escrowing because the final rule still requires servicers to include amounts the servicer advanced on the veteran's behalf. VA is also concerned that requiring veterans to receive and then redirect such funds to tax authorities and insurance providers would place an undue burden on veterans who may already be facing challenges on several fronts due to the pandemic. Such a policy would also raise a significant risk of delay, confusion, and error.

As mentioned, the final rule retains the requirement that, where the guaranteed loan documents do not provide for monthly escrowing, servicers must include all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf during the COVID-19 forbearance. Additionally, in cases of veterans who do pay taxes and insurance premiums through an escrow account, servicers must still include all scheduled but missed monthly escrow payments in the partial claim.

H. Inclusion of Payments Due Within 31 Days (38 CFR 36.4805(e))

One commenter recommended that VA remove the requirement in proposed 38 CFR 36.4805(e) whereby servicers must include scheduled monthly payments that are due within 31 days of the date the veteran executes the note and security instrument. The commenter noted that 31 days was insufficient based on experience in FHA's partial claim program. The commenter noted that servicers have

limited control over when the veteran executes the note and security instrument, as well as when the veteran returns such items to the servicer.

VA Response: VA acknowledges the commenter's concern but is uncertain how eliminating the 31-day timeframe would assist borrowers and servicers. In proposing to require such amounts be included in the partial claim payment, VA sought to avoid cases where veterans are asked to make a mortgage payment only days after executing the note and security instrument.

Nevertheless, VA does understand that servicers face difficulty in preparing and delivering a note that contains the correct partial claim amount, when the servicer has no control over when the veteran executes the note. If the veteran was unable to sign the note before a certain number of days passed, under VA's proposed rule, the servicer could be required to waive, for example, the first mortgage payment that would have been due when the veteran returns to normal repayment.

To address this concern, VA is adopting changes in the final rule to require servicers to include all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806. This will ensure that the servicer can include the correct partial claim payment amount on the note and security instrument.

Similarly, VA is amending the requirement at 38 CFR 36.4807(c) that servicers report a partial claim event to VA through VA's existing electronic loan servicing system within seven days of the borrower's execution of the note. Since the servicer may not know the exact date the note is executed, VA will instead require the servicer to report the partial claim event to VA within seven days of the date the veteran returns the executed note to the servicer, but not later than 90 days after the date the veteran exits the COVID-19 forbearance.

I. Servicer Incentives

Two commenters requested that VA consider including a servicer incentive for executing a partial claim payment. One commenter noted that servicers will lose servicing fee revenue as a result of the partial claim payment, while undertaking additional servicing responsibilities in the form of additional certifications and financial evaluations in advance of completing the partial claim payment. Another commenter wrote that executing the partial claim

²¹ See 85 FR 79142, 79154 (Dec. 9, 2020).

payment will likely be more work for servicers than the other five servicer actions for which VA already pays incentives pursuant to 38 CFR 36.4319. That commenter also recommended that VA pay an incentive equivalent to a loan modification under § 36.4319 as the work required to execute a partial claim payment corresponded closely to the work required to execute a loan modification.

VA Response: VA does not agree with the commenters that a servicer incentive is needed for the COVID-VAPCP. As discussed above, this final rule makes several improvements and streamlines the partial claim process. More salient, the partial claim payment itself should constitute a significant infusion of liquid cash to the servicers that participate. This immediate cash infusion can be used to help participating servicers cover their short-term obligations. It also affords these servicers the opportunity to take advantage of the time value of money; without the partial claim payment, certain servicers may need to wait years, or perhaps decades, to receive repayment of forbore amounts. Given the scope of the pandemic, some servicers might never be repaid the forbore amounts without the COVID-VAPCP, and indeed, a servicer's refusal to participate in the COVID-VAPCP could cause the servicer a foreclosure loss that could have easily been avoided by taking advantage of the COVID-VAPCP option. VA believes that this significant financial support already poses enough incentive to servicers. VA also believes that FHA's COVID-19 Standalone Partial Claim option, which does not provide for incentives, further evidences that an incentive is not necessary to promote servicers' use of the COVID-VAPCP.

J. Combined Deferral and Partial Claim Program

One commenter recommended that VA consider offering a combined deferral and partial claim program. The commenter noted that offering a deferment consistent with VA Circular 26-20-33²² presents, in many cases, the best option for both veteran and servicer, but, according to the commenter, the one limiting factor is whether a servicer has the financial capacity to defer the forbore payments for such an extended period. The commenter stated that this issue could be solved if servicers were able to

receive a partial claim payment when a COVID-19 forbearance period ends.

VA Response: VA declines to modify the proposed rulemaking in this way. The COVID-VAPCP is a fundamental shift for all stakeholders in VA's home loan program. Moreover, as VA explained in the proposed rule, the authorization of loan deferment is a "novel home retention option," one that, "[o]rdinarily, VA's regulation at 38 CFR 36.4310(a) would prohibit."²³ VA is being asked to change the position VA took in the proposed rulemaking when the proposed rule and VA's temporary loan deferment policy already constitute significant changes within VA's home loan program. Assuming VA were to do so, VA would likely need to insert new guardrails, which would require even further departure from what was proposed.

As mentioned above, VA is continuing to explore ways to help veterans as they exit their COVID-19 forbearances and as foreclosure/eviction moratoriums end. VA expects the upcoming weeks to provide critical information in evaluating the COVID-VAPCP and additional measures to help veterans. In fact, VA anticipates additional rulemaking could be necessary. Given the potential for another rulemaking in upcoming weeks, the concerns about departing too far from the proposed rule, and the immediate need to publish this final rule notice, VA is not making any changes to the rule based on this comment.

K. Effect on Secondary Markets

One commenter requested that VA address whether loans bought out of a Government National Mortgage Association (Ginnie Mae) security will be eligible for re-pooling once a veteran has resumed making payments and the servicer has otherwise complied with Ginnie Mae requirements. The commenter noted that the proposed rule states that a partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made; thus, it was the commenter's understanding that such loans will be eligible for re-pooling.

VA Response: VA notes that it does not set eligibility requirements for Ginnie Mae securities. Therefore, VA cannot state whether such loans will be eligible for re-pooling under the circumstances described by the commenter. However, VA reiterates²⁴ that a partial claim does not affect the guaranty percentage on the guaranteed

loan. In other words, VA will not deduct the amount of any partial claim payment from any future guaranty claim. VA will continue to honor the requisite guaranty percentage established by existing law.²⁵

L. Other Comments

One commenter posed several questions regarding refinance loans and future loan modifications. First, the commenter requested that VA clarify whether the security interest on the new loan can be subordinated to a VA-guaranteed Interest Rate Reduction Refinancing Loan (IRRRL). The commenter also asked that VA clarify whether the new loan can be paid off through an IRRRL. Finally, the commenter requested that VA advise whether the new loan can be paid off through a subsequent loan modification of the VA-guaranteed loan.

VA Response: VA notes that under both the proposed and final rules, repayment in full will be required immediately upon the refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated. As such, there is no instance in which the new loan created under the COVID-VAPCP would continue to exist after the veteran refinances through an IRRRL. A veteran seeking to refinance with an IRRRL will be required to repay the new COVID-VAPCP loan in full, meaning the lien subordination issue raised by the commenter should not arise in such cases. However, VA reminds servicers that the guaranteed loan must remain in first lien position.²⁶ Similarly, under the plain text of 38 U.S.C. 3710(e)(1)(C), a COVID-VAPCP loan would be excluded from the balance that could be refinanced as an IRRRL.²⁷ Finally, the new COVID-VAPCP loan cannot be paid off through a loan modification of the guaranteed loan. Nevertheless, since a loan modification is neither a refinance nor payment-in-full of the guaranteed loan, the new COVID-VAPCP loan would continue in effect, after modification of the guaranteed loan.

Another commenter encouraged VA to expedite use of the COVID-VAPCP outside of finalizing the proposed rule. The commenter suggested VA utilize its Circular process to offer this home retention option.

²⁵ See, for example, 38 U.S.C. 3703 and 3732.

²⁶ See 38 U.S.C. 3703(d)(3)(A).

²⁷ See 38 U.S.C. 3710(e)(1)(C) (prescribing that the amount of an IRRRL may not exceed an amount equal to the sum of the balance of the loan being refinanced, closing costs, and, if applicable, energy efficient improvements).

²² VA Circular 26-20-33, *Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases*, (Sept. 14, 2020), https://vbaw.vba.va.gov/HOMELoans/docs/hot_topics/26_20_33.pdf.

²³ 85 FR 79142, 79145 (Dec. 9, 2020).

²⁴ See 85 FR 79142, 79152 (Dec. 9, 2020).

VA Response: VA agrees with the commenter that swift implementation of the COVID–VAPCP is necessary. However, VA believes that consideration of public comments is crucial to ensure that the program is tailored to meet veterans' needs. VA has worked to finalize this rule as quickly as possible and, as discussed further below, is setting an effective date in consideration of the fact that veterans now have increased opportunities to receive COVID–19 forbearances and that servicers will require some lead time to prepare for implementation.

Finally, VA received two comments regarding existing home retention and loan servicing policies. One of these comments was that VA should clarify whether the VA option to purchase a guaranteed loan upon a borrower's default (a process VA commonly refers to as a loan refund²⁸) occurs before a short sale or deed in lieu of foreclosure, or before a servicer initiates a foreclosure. Another commenter suggested that VA revise a monthly payment reduction requirement associated with VA's Streamline Modification option.

VA Response: VA declines to respond to these comments as they are beyond the scope of this rule.

III. Clarifying Amendments to the Final Rule Based on Comments

In addition to the changes discussed above, VA is adopting the following revisions to address technical issues that arose when considering comments.

A. Definitions (38 CFR 36.4801)

In the proposed rule, VA proposed a definition of "CARES Act forbearance" to mean forbearance of scheduled monthly guaranteed loan payments, as granted to a veteran under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136). At that time, VA only referenced forbearance periods granted to a veteran under section 4022 of the CARES Act.

The purpose of the COVID–VAPCP was not to limit assistance to the protections afforded under the CARES Act, but instead to establish a temporary program to help veterans who are experiencing financial hardship due, directly or indirectly, to the COVID–19 national emergency.²⁹ As noted above, the COVID–19 national emergency has now entered its second year. In consideration of the fact that the pandemic has imposed a prolonged

financial hardship for many individuals, VA has been part of the coordinated federal response that extends protections for borrowers with federally backed mortgages.³⁰ For example, certain veterans can now receive COVID–19 forbearances that can remain in effect until as late as June 30, 2022. Additionally, certain veterans who may have already reached the end of their initial periods of forbearance can now receive up to two additional three-month COVID–19 forbearance periods, which can remain in effect until as late as December 31, 2021. To ensure it is clear that veterans who receive COVID–19 forbearances can take advantage of the COVID–VAPCP, VA is replacing the term "CARES Act forbearance" with "COVID–19 forbearance" and adding a sentence clarifying that this term can "include any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran for a financial hardship due, directly or indirectly, to the COVID–19 national emergency." For consistency, VA is also changing the term "CARES Act indebtedness" to "COVID–19 indebtedness" in the final rule. The definition remains unchanged but for replacing "CARES Act forbearance" with "COVID–19 forbearance".

B. Guaranteed Loans Made On or After March 1, 2020 (38 CFR 36.4803(a))

In the proposed rule, § 36.4803(a) stated that "[t]he loan for which a partial claim payment is requested must be a guaranteed loan that was, on March 1, 2020, either current or less than 30 days past due." The implication could be that VA meant for the rule to exclude from the COVID–VAPCP veterans who obtained new guaranteed loans on or after March 1, 2020. This is not what VA intended. Therefore, to ensure that the text of the final rule leaves no doubt that such veterans can receive assistance under the COVID–VAPCP, VA is implementing a technical change to § 36.4803(a). The revised text now expressly allows veterans whose guaranteed loans were made on or after March 1, 2020 to receive COVID–VAPCP assistance, provided all other requirements are met.

³⁰ See *Fact Sheet: Biden Administration Announces Extension of COVID–19 Forbearance and Foreclosure Protections for Homeowners*, (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>. See also VA Circular 26–21–04, *Approving Forbearance Requests for Veterans Affected by COVID–19*, (Feb. 16, 2021), https://www.benefits.va.gov/HOMELANS/documents/circulars/26_21_04.pdf.

C. Additional Technical Edits (38 CFR 36.4805(e)(3)(ii) and (e)(4))

In the proposed rule, § 36.4805(e)(3)(ii) stated that the servicer must include "if applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed after March 1, 2020, but before the veteran was granted the CARES Act forbearance".³¹ The purpose of this paragraph was to allow individuals who may have been late in requesting forbearance under the CARES Act, but nevertheless missed their guaranteed loan payment(s) due to circumstances related to the COVID–19 national emergency, to include such amounts in the partial claim, provided the guaranteed loan was current or less than 30 days past due on March 1, 2020.³²

VA is amending this section in the final rule to add "on or" before the phrase "after March 1, 2020". VA believes this technical change is necessary because most mortgage payments are due on the first of each month, meaning the original text might have inadvertently excluded a payment that a veteran missed on March 1, 2020. This revision will also promote consistency with the final version of § 36.4803(a)(1), which limits the program, in relevant part, to cases where the guaranteed loan was current or less than 30 days past due on March 1, 2020. Moreover, VA believes that because the COVID–VAPCP is designed to mitigate the effects of the COVID–19 national emergency, which is effective as of March 1, 2020, it is prudent to allow for the possibility that a payment missed on that date could be included in the partial claim amount.

The need for this technical amendment is even clearer when considering that the CARES Act was signed into law by the President on March 27, 2020. It is highly likely that some veterans had already been affected by the pandemic on March 1, 2020, and thus could not make their mortgage payment. Such veterans may not have called their servicer to request a COVID–19 forbearance until, for example, April 1, 2020, that is, the date the April payment was due. In such cases, the guaranteed loans would have been less than 30 days past due on March 1, 2020. However, the text of the proposed rule would have prohibited servicers from including such a payment because it was missed on

³¹ 85 FR 79142, 79160 (Dec. 9, 2020).

³² See 85 FR 79142, 79150 (Dec. 9, 2020).

²⁸ 38 CFR 36.4320.

²⁹ "VA proposes to initiate a temporary program that would establish a partial claim option to aid veterans who suffer financial hardship due to COVID–19." 85 FR 79142 (Dec. 9, 2020).

March 1, 2020 not “after March 1, 2020.”³³

In § 36.4805(e)(4), VA is replacing the term “borrower” with the term “veteran” to remain consistent with other sections in Subpart F. With the exception of references that include co-borrowers or non-borrowers who may hold title to the property, VA’s intention is to use the term “veteran” throughout.

IV. Section-by-Section Analysis of the Final Regulatory Amendments

As discussed in the proposed rule, the COVID-VAPCP is a temporary program to help veterans return to making normal loan payments on their guaranteed loans after exiting a COVID-19 forbearance period.³⁴ The proposed rule further noted that VA’s existing home retention, loss-mitigation, alternatives to foreclosure, and other servicing regulations and policies remain in effect.³⁵ Thus, to avoid confusion, VA is adding a new subpart F to part 36 of the Code of Federal Regulations (CFR) to contain the regulations that govern this temporary program.³⁶

The following outlines the new subpart F, as prescribed under this final rule, with further explanation of each individual section, as appropriate.

A. § 36.4800 Applicability

In § 36.4800, VA notes that this subpart applies to all loans guaranteed by VA, to the extent such loans are affected by the COVID-19 national emergency.

There is no change from the proposed rule to this section.

B. § 36.4801 Definitions

In § 36.4801, VA sets forth the definitions applicable to new subpart F.

VA defines “alternative to foreclosure”, “COVID-19 forbearance”, “COVID-19 indebtedness”, “Guaranteed loan”, “Loss-mitigation option”, “Secretary”, and “Servicer” as set out in the regulatory text below.

Changes in this section replace certain references to the CARES Act with COVID-19. These changes align the scope of the COVID-VAPCP with the coordinated federal response to veterans’ prolonged financial hardship, as discussed in section III.A. above.

C. § 36.4802 General Purpose of the COVID-19 Veterans Assistance Partial Claim Payment Program

In § 36.4802, VA sets forth the general purpose of the COVID-VAPCP. Intending to provide some introductory context for this novel option within VA’s home loan program, VA states that the COVID-VAPCP is a temporary program to help veterans who have suffered a COVID-19 financial hardship. Notwithstanding the requirements elsewhere in part 36 regarding payment of a guaranty claim or refunding a loan, this section allows VA to assist a veteran exiting a COVID-19 forbearance by purchasing from the servicer the veteran’s COVID-19 indebtedness. Such a purchase is called a partial claim payment. In exchange for VA’s partial claim payment on behalf of the veteran, the veteran must agree to repay the Secretary, in the amount of such partial claim payment, upon loan terms established by the Secretary.

The only changes to this section from the proposed rule include conforming amendments associated with the definitional changes in § 36.4801. See section IV.B. above.

D. § 36.4803 General Requirements of the COVID-19 Veterans Assistance Partial Claim Payment Program

In § 36.4803, VA sets forth the general requirements of the COVID-VAPCP. First, VA requires that the loan for which a partial claim payment is requested must be a guaranteed loan that was either current or less than 30 days past due on March 1, 2020, or was made on or after March 1, 2020. Second, VA requires that the veteran on whose behalf VA will pay a partial claim payment both received a COVID-19 forbearance and missed at least one scheduled monthly payment. Third, VA requires that there remains unpaid at least one scheduled monthly payment that the veteran did not make while under a COVID-19 forbearance. Fourth, VA requires the veteran to indicate that the veteran can resume making scheduled monthly payments, on time and in full, and that the veteran occupies, as the veteran’s residence, the property securing the guaranteed loan for which the partial claim is requested. Lastly, VA requires the veteran to execute, in a timely manner, all loan documents necessary to establish an obligation to repay the Secretary for the partial claim payment.

This section incorporates changes VA is making in response to commenter concerns about the COVID-VAPCP evaluation and application process. As discussed in section II of this final rule,

veterans must only indicate, not certify, as to their ability to resume making scheduled monthly payments and their occupancy of the property securing the guaranteed loan. Similarly, servicers are not required to certify as to the adequacy of the veteran’s monthly residual income based on a financial evaluation. Also, in response to comments discussed above, VA is clarifying that the final rule expressly allows veterans whose loans were made on or after March 1, 2020 to receive assistance, provided all other requirements are met. See section III.B. above. VA is also making conforming amendments associated with the definitional changes in § 36.4801. See section IV.B. above.

E. § 36.4804 Partial Claim Payment as a Home Retention Option

In § 36.4804, VA reiterates that the COVID-VAPCP is designed to address the financial hardships due, directly or indirectly, to the COVID-19 national emergency. This section states that a servicer may therefore use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran’s financial interest. This section also allows the servicer to immediately proceed to offering an alternative to foreclosure if the veteran notifies the servicer that the veteran does not want to retain ownership of the property securing the guaranteed loan.

Changes in this section, including changes to the section heading, are in response to commenter concerns as discussed in section II.D. above.

F. § 36.4805 Terms of the Partial Claim Payment

In § 36.4805, VA sets forth the terms of the partial claim payment. In paragraph (a), in order for a partial claim payment to be payable, the servicer must submit to the Secretary, not later than 120 days after the date the veteran exits the COVID-19 forbearance, a request for such payment, as prescribed in § 36.4807. Paragraph (b) of this section states that the amount of the partial claim payment that VA will pay to the servicer, as calculated under paragraph (e), shall not exceed 30 percent of the unpaid principal balance of the guaranteed loan. For the purposes of paragraph (b), the unpaid principal balance of the guaranteed loan means such balance as of the date the veteran entered into a COVID-19 forbearance. Paragraph (c) states that VA will pay only one partial claim payment per guaranteed loan. Paragraph (d) states

³³ See 85 FR 79142, 79160 (Dec. 9, 2020) (emphasis added).

³⁴ See 85 FR 79142 (Dec. 9, 2020).

³⁵ 85 FR 79142, 79148 (Dec. 9, 2020).

³⁶ 85 FR 79142 (Dec. 9, 2020).

that VA will pay only one partial claim payment per veteran.

In paragraph (e)(1), VA states that because VA will pay only one partial claim payment per guaranteed loan, and only one partial claim payment per veteran, a servicer must, when calculating the amount of partial claim payment to be paid by VA to the servicer, include the full amount of indebtedness that is necessary to bring the guaranteed loan current. In paragraph (e)(2), VA states that to bring the guaranteed loan current, servicers must include the full COVID-19 indebtedness, comprising (i) all scheduled but missed monthly payments of principal and interest; and (ii) as applicable, all scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, or where the guaranteed loan documents do not provide for monthly escrowing, all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf, during the COVID-19 forbearance.

In paragraph (e)(3)(i), VA requires servicers to include all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806. VA notes that any such payment due within 31 days of such date may be considered part of the veteran's obligation to bring the guaranteed loan current. As such, VA is requiring servicers to include this amount in the partial claim payment.

In paragraph (e)(3)(ii), VA requires servicers to include, if applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed on or after March 1, 2020, but before the veteran was granted a COVID-19 forbearance. As discussed in the notice of proposed rulemaking, VA included this feature to allow veterans who may have missed a payment before requesting forbearance, but who would otherwise meet the COVID-VAPCP requirements, to participate in the program.³⁷ In such cases, however, the servicer must waive any late charges and fees associated with these missed payments. Additionally, under paragraph (e)(3)(iii), VA requires servicers to include the actual amount of recording fees, recording taxes, or other charges levied by the recording authority that must be paid in order to

record the security instrument described in § 36.4806.

In paragraph (e)(4), VA clarifies that servicers shall not include any amounts in the partial claim that are not listed by paragraph (e)(2) or (3). This means servicers cannot include any amounts (for example, fees, penalties, or interest) beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the guaranteed loan, or any late charges and fees that the veteran incurred between March 1, 2020, and the date the veteran entered the COVID-19 forbearance.

In paragraph (e)(5), VA states that nothing in § 36.4805 shall preclude a veteran from making an optional payment or a servicer from waiving a veteran's indebtedness, such that the amount of partial claim payment would not exceed the 30 percent cap described in paragraph (b).

In paragraph (e)(6), VA explains that if the servicer miscalculates the partial claim amount, resulting in an overpayment to the servicer, the amount of such overpayment shall constitute a liability of the servicer to the United States. The servicer will be required to remit the overpaid amount immediately to VA. In paragraph (e)(7), VA states that if the servicer miscalculates the partial claim amount, resulting in underpayment (*i.e.*, an amount insufficient to bring the guaranteed loan current), the servicer must waive the difference.

Finally, paragraph (e)(8) prohibits servicers from including any amounts for a monthly payment that is scheduled to be paid on a date that is more than 31 days after the servicer provides to the veteran the note and security instrument described in § 36.4806.

Under paragraph (f), the servicer is required to prepare a note and security instrument in favor of the "Secretary of Veterans Affairs, an Officer of the United States". Using the "Department of Veterans Affairs" or the "United States" is incorrect. Furthermore, certain states have their own Departments of Veterans Affairs, and without the explicit distinction made here, confusion could result. Therefore, it is critical that the note and security instrument read in favor of the "Secretary of Veterans Affairs, an Officer of the United States". In cases where state law requires naming a real person, this final rule notice allows servicers to include the name of the incumbent Secretary. These provisions are consistent with VA's property conveyance rule found at 38 CFR 36.4323(d)(8).

VA requires that the note be consistent with the terms described in § 36.4806 and include all borrowers who are obligated on the guaranteed loan. The security instrument is also required to include all persons (borrowers, as well as non-borrowers) who hold a title interest in the property securing the guaranteed loan. In paragraph (g), subject to the requirement that the servicer submit the application for a partial claim payment to VA not later than 90 days after the date the veteran exits the COVID-19 forbearance, VA requires all loan documents to be fully executed not later than 90 days after the veteran exits the COVID-19 forbearance. Paragraph (h) requires the servicer to record the security instrument timely, as prescribed in § 36.4807. Finally, in paragraph (i), the servicer is prevented from charging, or allowing to be charged, to the veteran any fee in connection with the COVID-VAPCP.

VA is making several changes to the final rule text in § 36.4805. First, there are technical conforming amendments in paragraphs (a), (b), (e)(2), (e)(2)(ii), (e)(3)(ii), and (g), related to definitional changes in § 36.4801. See section IV.B. above. VA is also incorporating a technical edit to paragraph (e)(4) that replaces "borrower" with "veteran" to remain consistent across Subpart F. See section III.C. above. In paragraph (e)(3)(ii), VA is revising the text to clarify VA's intent that payments missed on March 1, 2020 can be included in the partial claim amount. See section III.C. above.

Also in response to comments discussed above, VA is amending paragraph (a) to reflect the adjustment to the timeframe in which servicers must request a partial claim payment from 90 days to 120 days, as discussed in section II.F. above. VA is also amending paragraphs (b) and (e)(5) to reflect the change in the maximum amount of available assistance, that is, from 15 percent of the UPB to 30 percent of the UPB. This change is discussed in more detail in section II.B.3. above.

Finally, VA is revising paragraph (e)(3)(i) such that the payments servicers must include in the partial claim amount will now be tied to the date the servicer provides the loan documents to the veteran, instead of the date the veteran executes such documents. As discussed in section III.H. above, this revision addresses industry concerns that servicers do not control when a veteran executes the note and security instrument, which increases the risk that servicers will miscalculate the partial claim payment amount. For example, under this final rule, a servicer

³⁷ 85 FR 79142, 79150 (Dec. 9, 2020).

that provides a COVID-VAPCP note and security instrument to a veteran on June 15, 2021, must include the July 1, 2021 guaranteed loan payment in the partial claim payment amount, and the veteran will not need to make a guaranteed loan payment until August 1, 2021.

VA is also making a conforming amendment to paragraph (e)(8) to account for the revisions to paragraph (e)(3)(i). VA is also making technical drafting edits to paragraph (f) to clarify that “Secretary of Veterans Affairs, an Officer of the United States” should appear on the note and security instrument and that the name of the incumbent Secretary should not be included unless State law requires naming a real person.

G. § 36.4806 Terms of the Assistance to the Veteran

If a veteran chooses to accept VA’s assistance (*i.e.*, a partial claim payment to the servicer, on the veteran’s behalf), the veteran, and all co-borrowers on the guaranteed loan, must execute a note and security instrument in favor of “the Secretary of Veterans Affairs, an Officer of the United States”. In addition, all non-borrowers holding a title interest in the property are required to sign the security instrument. In paragraph (b), VA establishes specific terms of the note and security instrument. Specifically, VA requires the note and security instrument to include the amount to be repaid to the Secretary, by the veteran, to be the amount calculated under § 36.4805(e). VA also requires repayment in full immediately upon the

veteran’s transfer of title to the property, or the refinancing or payment in full otherwise, of the guaranteed loan with which the partial claim payment is associated. Finally, VA states that a veteran may make payments for the subordinate loan, in whole or in part, without charge or penalty. If the veteran makes a partial prepayment, there will be no changes in the due date unless VA agrees in writing to those changes.

As discussed in section II above, VA is revising § 36.4806 to remove provisions that were in proposed paragraphs (b)(2) through (b)(5), which would have required repayment of the COVID-VAPCP loan within ten years and would have applied a 1.00 percent interest rate to the loan. VA is also redesignating proposed paragraph (b)(6) as paragraph (b)(2). VA is also adding new paragraph (b)(3) to expressly state that a veteran may make partial prepayments of the new COVID-VAPCP loan. This conforming amendment is necessary to preserve an element of the proposed rule which would have prohibited VA from charging veterans any fees for any prepayments made during the 60-month deferment term.³⁸ As this final rule does not provide for a repayment term, and thus no deferment term, VA is preserving this crucial protection for veterans by expressly stating in new paragraph (b)(3) that veterans can make prepayments on the COVID-VAPCP loan, in whole or in part, without charge or penalty. VA is also making technical drafting edits to paragraph (a) to clarify that the “Secretary of Veterans Affairs,

an Officer of the United States” should appear on the note and security instrument and the name of the incumbent Secretary should not be included unless State law requires naming a real person. VA is also making technical drafting edits to paragraph (b)(2), as redesignated, to remove unnecessary commas that appeared after “refinancing” and “otherwise” in the proposed rule.³⁹

H. § 36.4807 Application for Partial Claim Payment

In § 36.4807, VA requires the servicer to provide VA with the original note required by § 36.4805. Also, not later than 180 days following the date the security instrument required by § 36.4805 is fully executed, the servicer must provide VA with the original security instrument and evidence that the servicer recorded such instrument. If the recording authority causes a delay, the servicer may request an extension of time, in writing, from VA.

Servicers will utilize VA’s existing loan servicing platform, the VA Loan Electronic Reporting Interface (VALERI) system, to report the partial claim payment event. Servicers must report the partial claim event within seven days of the date the veteran returns to the servicer the executed note required by § 36.4805, but not later than 120 days after the date the veteran exits the COVID-19 forbearance. Below, VA has identified the specific data elements that servicers must input into VALERI when reporting the partial claim event.

DATA ELEMENT DEFINITIONS

Event name	Data elements	Business definition of data element
Partial claim	Principal amount	Total dollar amount of all scheduled but missed monthly payments of principal, as described in § 36.4805(e)(2)(i) and (e)(3)(ii), and all scheduled monthly payments of principal due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim	Interest amount	Total dollar amount of all scheduled but missed monthly payments of interest, as described in § 36.4805(e)(2)(i) and (e)(3)(ii), and all scheduled monthly payments of interest due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim	Tax payments missed amount.	Total dollar amount of all scheduled but missed monthly escrow payments for real estate taxes, as described in § 36.4805(e)(2)(ii) and (e)(3)(ii), and all scheduled monthly escrow payments for real estate taxes due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim	Insurance payments missed amount.	Total dollar amount of all scheduled but missed monthly escrow payments for insurance premiums, as described in § 36.4805(e)(2)(ii) and (e)(3)(ii), and all scheduled monthly escrow payments for insurance premiums due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim	Tax advance amount ...	Total dollar amount of all payments the servicer made to real estate tax authorities on the veteran’s behalf, as described in § 36.4805(e)(2)(ii).
Partial claim	Tax advance date	The date on which the servicer made the tax advance on the veteran’s behalf, as described in § 36.4805(e)(2)(ii).
Partial claim	Insurance advance amount.	Total dollar amount of all payments the servicer made to insurance providers on the veteran’s behalf, as described in § 36.4805(e)(2)(ii).

³⁸ 85 FR 79142, 79160 (Dec. 9, 2020).

³⁹ 85 FR 79142, 79160 (Dec. 9, 2020).

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Partial claim	Insurance advance date	The date on which the servicer made the insurance advance on veteran's behalf, as described in § 36.4805(e)(2)(ii).
Partial claim	Recording fees	Total dollar amount of recording fees, recording taxes, or other charges levied by the recording authority, that must be paid in order to record the security instrument, as described in § 36.4805(e)(3)(iii).
Partial claim	Partial claim origination date.	The date the borrower executes the note required by § 36.4805.
Partial claim	Partial claim legal description.	The legal description of the property.
Partial claim	Partial claim lien position.	The lien position of the partial claim loan.
Partial claim	Second borrower birth date.	The birth dates of all co-borrowers.

To address stakeholder comments discussed in section II above, VA is adopting changes to § 36.4807 to eliminate the requirement that veterans and servicers complete and submit an application form. Thus, VA deleted proposed paragraph (a) and redesignated proposed paragraphs (b) and (c) as paragraphs (a) and (b). In newly redesignated paragraph (a), VA deleted the introductory phrase “Along with a complete application form,”. In newly redesignated paragraph (b), VA amended the deadline for which servicers must report a partial claim event through VA's electronic loan servicing system (VALERI). The revised deadline will now be measured from the date the borrower returns the executed note to the servicer, rather than the date the borrower executes the note. VA made this revision to address commenters' concerns about servicers being unable to dictate the date on which a veteran executes the note. See section II above. VA also amended newly redesignated paragraph (b) to include a conforming technical edit that is related to VA's decision to increase the timeframe in which servicers must request a partial claim payment from 90 days to 120 days post-forbearance. See section II.F. above.

Regarding the VALERI data elements outlined above, VA is deleting the following data elements as they are no longer necessary given the elimination of the ten-year repayment term: Partial claim first payment due date; partial claim maturity date; and partial claim P&I payment amount. VA is also updating the following data element definitions to align with changes to § 36.4805(e)(3)(i): Principal amount; Interest amount; Tax payments missed amount; and Insurance payments missed amount.

I. § 36.4808 No Effect on the Servicing of the Guaranteed Loan

In § 36.4808, VA requires servicers to continue to service the guaranteed loan in accordance with subpart B of part 36. The liability of the United States for any guaranteed loan shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the guaranteed loan. A partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made. Receipt of a partial claim payment shall not eliminate a servicer's option under 38 U.S.C. 3732 to convey to the Secretary the security for the guaranteed loan.

There is no change from the proposed rule to this section.

J. § 36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment Program

In § 36.4809, VA notes that the Secretary will not accept a request for a partial claim payment after the date that is 180 days after the date the COVID-19 national emergency ends under the National Emergencies Act, unless a veteran's COVID-19 forbearance does not end until after such date. In cases where a veteran's COVID-19 forbearance ends after the subject date, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance. However, in no event will the Secretary accept a request for a partial claim payment after October 28, 2022.

VA is making several changes to the final rule text in § 36.4809 for reasons outlined in section II.E. above. First, there are technical conforming amendments in paragraph (b) related to definitional changes in § 36.4801. See section IV.B. above. VA is also adopting

a change in paragraph (b) to replace “may still” with “shall” in response to public comments. Also, VA is amending paragraph (b) to include a conforming technical edit that is related to VA's decision to increase the timeframe in which servicers must request a partial claim payment from 90 days to 120 days post-forbearance. See section II.F. above. Additionally, in response to public comments, VA is replacing the date “September 9, 2021” with “October 28, 2022” in paragraph (c).

K. § 36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment Program

In § 36.4810, VA sets forth the parameters for oversight of the COVID-19 VAPCP. It is an almost verbatim restatement of 38 U.S.C. 3704(d). Specifically, subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to a partial claim payment that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans. Notwithstanding the above, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer. The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant

to a determination of the Secretary of Housing and Urban Development.

As noted in both the proposed and final rule notices, VA will utilize its existing loan refund process to handle applications for partial claim payments via VALERI. Upon receipt of an application, VA will conduct a two-tier review and approval of the partial claim payment, utilizing information already in its VALERI systems to verify that the servicer has brought the veteran's guaranteed loan current, that the amount requested is consistent with other requirements, and that VA has received all necessary documentation. Partial claim payments will also be subject to VA's oversight and audit activities as part of VA's regular monitoring related to adequacy of loan servicing. If VA determines, during an audit, that a servicer did not follow VA's requirements when participating in the COVID-VAPCP, § 36.4810 expressly authorizes appropriate enforcement actions.

There is no substantive change from the proposed rule to this section. Rather, VA has included revisions to clarify the different forms of restrictions on participation in FHA programs encompassed by this section.

L. Conforming Technical Amendments

VA is adding new section 38 CFR 36.4336 that reiterates VA's parameters for oversight of loan servicing. This technical amendment is necessary to ensure that servicers adhere to the parameters outlined in § 36.4804, wherein the servicer must ensure that the partial claim option is in the veteran's financial interest. As with proposed § 36.4810, it includes an almost verbatim restatement of 38 U.S.C. 3704(d). Under this new section, subject to notice and opportunity for a hearing, whenever the Secretary finds that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans. Notwithstanding the above, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer. The Secretary may also refuse either temporarily or permanently to guarantee or insure any

loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

VA is also amending 38 CFR 36.4333(a)(2) to ensure that records referenced in proposed §§ 36.4336 and 36.4810 are included in VA's maintenance of record requirements. Currently, holders are required to "maintain records supporting their decision to approve any loss-mitigation option for which an incentive is paid in accordance with § 36.4319(a)." ⁴⁰ VA is deleting the phrase "for which an incentive is paid in accordance with § 36.4319(a)." To ensure that VA's partial claim payment option is covered, VA is adding a sentence noting that the holder is required to maintain records supporting their decision to pursue a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program as established by proposed subpart F. Regarding the length of the recordkeeping requirement, VA is retaining an element of the status quo, namely that such records shall be retained a minimum of three years from the date of any incentive paid in accordance with § 36.4319(a) or the date the veteran's guaranteed loan is made current via the COVID-VAPCP, whichever is later. Finally, VA is amending the specific authority for § 36.4333 to include 38 U.S.C. 3704(d), as this section requires the maintenance of adequate loan accounting records.

There is no substantive change from the proposed rule to this section. Rather, VA has included revisions to clarify the different forms of restrictions on participation in FHA programs encompassed by this section.

V. Effective Date of Final Rule

In the notice of proposed rulemaking, VA repeated its commitment to bringing financial relief to veterans with VA-guaranteed home loans affected by the COVID-19 national emergency. VA also noted that it considered whether "good cause" existed to dispense with notice-and-comment rulemaking under the Administrative Procedure Act (APA). ⁴¹ However, despite the need for certainty that VA's partial claim program would be available to veterans as they exit forbearance, VA believed the novel legal policies warranted an opportunity for public input.

As evident from this final rule notice, public input was valuable to ensuring

that VA implements a partial claim payment program that delivers on its commitment. VA is now faced with determining whether it should accelerate the effective date of this program beyond statutory timeframes outlined in the Congressional Review Act. ⁴² Specifically, absent a showing of "good cause," this final rule (which is a "major rule" under the CRA, *see infra*) will become effective the later of the date occurring 60 days after the date on which Congress receives the report, or the date the rule is published in the **Federal Register**. ⁴³ For reasons discussed below, VA does not believe acceleration of the effective date is necessary.

In the proposed rule, VA requested specific input from VA stakeholders as to the amount of time needed to implement VA's final rule. Anticipating that industry participants would require some amount of time to review, understand, and implement the COVID-VAPCP, VA sought additional information as to whether increased burdens or costs would accompany any accelerated timetables. VA also requested input as how a 30- or 60-day delay in the effective date might negatively impact veterans, servicers, and other stakeholders.

VA received four comments responding to its request. Three of the four commenters indicated that the seven-day timeframe suggested by VA in its request for comments would be insufficient for servicers to operationalize the proposed rule. One commenter noted that even a 60-day timeframe was unlikely to be enough. Another commenter suggested that VA consider a 90-day timeframe to allow servicers to upgrade technology systems, develop operational procedures, and train staff. The third commenter echoed those sentiments, indicating that several months would likely be needed if VA were to finalize the rule as proposed. However, the third commenter also suggested that a shorter implementation timeframe would be needed if VA were to adopt changes to the final rule to align the COVID-VAPCP with FHA's partial claim program, thereby allowing servicers familiar with that program to adapt quickly and to utilize existing documents. Finally, as previously discussed, one commenter recommended that VA implement the COVID-VAPCP via Circular, indicating that the rulemaking process was too slow to bring needed relief to veterans.

⁴⁰ 38 CFR 36.4333(a)(2).

⁴¹ See 5 U.S.C. 553(b)(B).

⁴² See 5 U.S.C. 801(a)(3)(A).

⁴³ 5 U.S.C. 801(a)(3)(A); *see also* 5 U.S.C. 808.

VA understands the concerns of its stakeholders on this issue. VA also remains committed to ensuring veterans' timely access to a partial claim payment home retention option. In consideration of the comments received, VA believes the 60-day statutory timeframe under the Congressional Review Act provides time for servicers to implement the final rule without significant impact to veterans. For reasons discussed immediately below, VA also believes the 60-day timeframe will not cause undue harm to veterans.

An internal assessment indicates that approximately half of VA-guaranteed loans in forbearance will reach 360 days of forbearance sometime during the months of May and June of 2021. However, as discussed above, VA has been a part of the coordinated federal response that extends protections for borrowers with federally backed mortgages.⁴⁴ For example, certain veterans can now receive COVID-19 forbearances that can remain in effect until as late as June 30, 2022. Additionally, certain veterans who may have already reached the end of their initial periods of forbearance can now receive up to two additional three-month COVID-19 forbearance periods, which can remain in effect until as late as December 31, 2021. Given these additional protections, VA now anticipates that most veterans currently in a COVID-19 forbearance will remain in such forbearance until at least late June 2021. VA also expects that most COVID-19 forbearance periods will now end in November 2021.

In light of the factors mentioned above, VA believes that allowing a 60-day timeframe between the publication date and effective date of this final rule is not "impracticable, unnecessary, or contrary to the public interest."⁴⁵ VA notes that certain veterans who will exit forbearance in late June or early July of 2021 will still be able to take advantage of the partial claim option, especially since VA has provided servicers with an additional 30 days (for a total of 120 days post-forbearance) in which to complete certain actions and request a partial claim. VA has sought to publish this final rule as quickly as possible to

ensure that the COVID-VAPCP will be effective in time to assist the majority of veterans whose loans are currently in forbearance without sacrificing the time needed to ensure servicers are able to prepare for assisting veterans coming out of forbearance.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its Regulatory Impact Analysis (RIA) are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). To assess whether the final rule can be expected to have a "significant economic impact" on small entities, VA considers the annual cost of the rule for small entities compared to their annual revenue. VA was able to determine the size of 127 out of 151 companies that service VA-guaranteed loans in COVID-19 forbearances, where the borrowers could likely receive assistance via a partial claim. VA made this determination using the size standards from the Small Business Administration (SBA).^{46 47} VA used data

from InfoUSA and Factiva (two business data providers) along with data from the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA). Out of the 127 servicers for which VA has sufficient data to determine their size, 36 (or 28.35 percent) are considered small by SBA standards. The average annual revenue of those 36 small servicers is \$13.04 million.⁴⁸

To determine the economic burden of the final rule on small entities, VA first compares the average annual costs of the rule that fall on small servicers to the average annual revenue of the small servicers. The costs of the rule come from rule familiarization and the Paperwork Reduction Act (PRA) costs, which include the costs for servicers to prepare and deliver to the veteran the original note and security instrument, and then deliver the executed note and security instrument to VA. The cost of rule familiarization is \$99.90 for each guaranteed loan servicer, including the small servicers. The PRA cost estimates vary across servicers depending on how many COVID-19 forbearance loans they service that either meet or could potentially meet COVID-VAPCP requirements.

As described in the impact analysis, the estimated number of borrowers who will likely meet the requirements for assistance via a partial claim is between 101,132 and 151,812. VA estimates that 15 percent of those loans are serviced by small entities, or between 15,170 and 22,772 loans. Given the total PRA cost for servicers of \$36.64 per loan, the total PRA cost to average small servicers is \$15,439.49 at the lower bound and \$23,176.84 at the upper bound.

The total cost of this rule to average small VA-guaranteed loan servicer ranges from \$15,539 (\$99.90 + \$15,439.49) to \$23,277 (\$99.90 + \$23,176.84), while the average annual revenue to small servicers is \$13.04 million. VA generally considers a rule to have a "significant economic impact" when the total annual cost associated

the SBA annual revenue threshold for small businesses. For industries where size standards are determined by assets, VA compares the relevant SBA threshold for small businesses to asset data from the FDIC for servicers with primary NAICS codes 522110 (Commercial Banking) and 522120 (Savings Institutions), and asset data from the NCUA for lenders with a primary NAICS code of 522130 (Credit Unions).

⁴⁷ U.S. Small Business Administration, *SBA Table of Size Standards*, (2019), https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.

⁴⁸ VA averages the sales volumes from Factiva for all servicers considered small, including those primarily considered commercial banks, savings institutions, and credit unions.

⁴⁴ See *Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners*, (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>. See also VA Circular 26–21–04, *Approving Forbearance Requests for Veterans Affected by COVID-19*, (Feb. 16, 2021), https://www.benefits.va.gov/HOMELANS/documents/circulars/26_21_04.pdf.

⁴⁵ See 5 U.S.C. 553(b)(B).

⁴⁶ VA uses data from InfoUSA and Factiva to determine the industry (as identified by the primary NAICS code) for the active VA-guaranteed loan servicers. For industries where size standards are determined by the average annual revenue, VA compares the revenue of each servicer in these industries, as reported in InfoUSA and Factiva, to

with the rule for a small entity is equal to or exceeds 1 percent of annual revenue. The total upper bound cost to small servicers is 0.18 percent of the average annual revenue to small servicers. This ratio is calculated using the total costs on small servicers, rather than the total annual costs. In subsequent years, absent the rule familiarization costs and with the dispersion of the PRA costs, the average annual cost to small servicers will be even below that level.

VA has also considered whether other economic impacts that are not easily quantifiable would have a significant impact on small servicers.⁴⁹ Ultimately, VA has determined that this final rule is not expected to have a significant economic impact on small servicers. The effect of the final rule is to provide servicers the opportunity to resolve COVID-19 forbearances through a home retention option that will both (1) help veterans return to making regular monthly mortgage payments to the servicer, and (2) recapitalize the servicer by purchasing veterans' total forbore indebtedness from the servicer. As discussed above, VA has adopted several changes to the final rule in response to industry comments regarding burdens associated with VA's proposed rule, including streamlining the process and requirements for requesting a partial claim payment. Additionally, and consistent with current VA servicing regulations and policies, servicers will not be required to offer the partial claim payment as a home retention option. Therefore, if a small servicer determines that participating in the COVID-VAPCP is not consistent with its business model, the final rule provides flexibility for the servicer to resolve forbearances using one of many existing home retention options.

Regarding the economic impact, that is, the paperwork burden, to servicers associated with this rule, VA notes that the changes adopted in this rule resulted in a 33 percent reduction in the estimated per loan paperwork burden to servicers. VA further notes that the economic costs of paperwork associated with this rule cannot be considered additive. In that regard, under existing VA statute and regulations, servicers are required to consider options to resolve a VA-guaranteed loan's delinquency once a veteran exits a COVID-19 forbearance. Each home retention and alternative to foreclosure option, as well

as foreclosure itself, imposes some cost to the servicer that is already contemplated in its current business model. Under this rule, the cost to request a partial claim payment replaces the cost of whichever other option would have been selected absent the COVID-VAPCP.

Notably, one commenter stated that the cost to servicers to execute a partial claim payment under the proposed rule was roughly equivalent to the cost to execute a loan modification. As VA believes a loan modification would be the home retention option most likely to be used to resolve COVID-19 forbearances absent this rule, the net impact of this rule on small servicers is likely to be insignificant for those that choose to participate.

To assess whether the rule can be expected to affect a "substantial number of small entities," VA considers a ratio that captures the incidence of small VA servicers in the potential universe of servicers. Specifically, VA uses the ratio of small VA servicers with guaranteed loans in COVID-19 forbearance that are likely to participate in the partial claim program to the total number of VA servicers with guaranteed loans in COVID-19 forbearance that are likely to participate in the partial claim program. As described above, 36 VA servicers out of the 127 servicers with sufficient data available are small (28.35 percent). Therefore, the final rule is expected to affect a substantial number of small entities.

While the final rule is expected to affect a substantial number of small entities, the impact will not be economically significant. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.⁵⁰

This final rule contains provisions that constitute a revised collection of information under 38 CFR 36.4333, which is currently approved under OMB control number 2900–0515. This rule also contains provisions that constitute a new collection of information under 38 CFR 36.4336 and 38 CFR 36.4810, which will be added under OMB control number 2900–0515. This rule also contains provisions that constitute a new collection of information under 38 CFR 36.4807, which will be added under existing OMB control number 2900–0021. Finally, this rule contains provisions that constitute a new collection of information under 38 CFR 36.4803, 36.4805, 36.4806, and 36.4807.

As required by 44 U.S.C. 3507(d), VA has submitted to OMB for its review and approval the information collections (both new and as amended) that have not yet been approved. VA will publish in the **Federal Register** a notice when OMB approves these information collections. In the interim, VA has retained the placeholder control numbers that appeared in the proposed rule. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by the OMB.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this regulatory action is a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act), 5 U.S.C. 801–808, because it is likely to result in an annual effect on the economy of \$100 million or more. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the

⁴⁹ 126 Cong. Rec. S10,940–10,942 (Aug. 6, 1980) (discussing that determining whether an economic impact is "significant" is not an exact standard and that agencies should not be limited to considering easily quantifiable costs).

⁵⁰ See also 5 CFR 1320.8(b)(3)(vi).

Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis associated with the Regulation.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs approved this document on April 8, 2021 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

- 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

- 2. Amend § 36.4333 by revising paragraph (a)(2) and the two parenthetical sentences at the end of the section to read as follows:

§ 36.4333 Maintenance of records.

(a) * * *

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option. The holder shall maintain records supporting their decision to pursue a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program established under subpart F of this part. Such records shall be retained a minimum of 3 years from the date of any incentive paid in accordance with § 36.4319(a) or, in the case of a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program, the date the veteran's guaranteed loan is made current under such program, whichever is later, and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and

other documents supporting the holder's decision.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703(c)(1), 3704(d))

- 3. Add § 36.4336 to read as follows:

§ 36.4336 Oversight of servicing.

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)

- 4. Add subpart F, consisting of §§ 36.4800 through 36.4810, to read as follows:

Subpart F—COVID-19 Recovery Measures

Sec.

36.4800 Applicability.

36.4801 Definitions.

36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.

36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.

36.4804 Partial claim payment as a home retention option.

36.4805 Terms of the partial claim payment.

36.4806 Terms of the assistance to the veteran.

36.4807 Application for partial claim payment.

36.4808 No effect on the servicing of the guaranteed loan.

36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.

36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.

§ 36.4800 Applicability.

This subpart applies to all loans guaranteed by VA, to the extent such loans are affected by the COVID-19 national emergency.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4801 Definitions.

The following definitions of terms apply to this subpart:

Alternative to foreclosure means an alternative to foreclosure for which the Secretary may pay an incentive under § 36.4319. These alternatives include compromise sale (sometimes called a short sale) and deed-in-lieu of foreclosure.

COVID-19 forbearance means any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136). It can also include any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran for a financial hardship due, directly or indirectly, to the COVID-19 national emergency.

COVID-19 indebtedness means the dollar amount the veteran is obligated to pay under the guaranteed loan terms, but that is not collected during a COVID-19 forbearance.

Guaranteed loan means a loan guaranteed under chapter 37 of title 38, United States Code.

Loss-mitigation option means a loss-mitigation option for which the Secretary may pay an incentive under § 36.4319. These options include a repayment plan, special forbearance, and loan modification.

Secretary means the Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs (VA) authorized to act in the Secretary's stead.

Servicer means, for the purposes of this subpart, the holder, servicer, or servicing agent, as defined in § 36.4301. The terms can apply jointly or severally, or jointly and severally.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.

The COVID-19 Veterans Assistance Partial Claim Payment program is a temporary program to help veterans who have suffered a COVID-19 financial hardship. Notwithstanding the requirements elsewhere in this part regarding payment of a guaranty claim or refunding a loan, VA may assist a veteran exiting a COVID-19 forbearance by purchasing from the servicer the veteran's COVID-19 indebtedness. Such a purchase is called a partial claim payment. In exchange for VA's partial claim payment on behalf of the veteran, the veteran must agree to repay the Secretary, in the amount of such partial claim payment, upon loan terms established by the Secretary.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.

The following general requirements must be met before the Secretary will allow for participation in the COVID-19 Veterans Assistance Partial Claim Payment program:

(a) The loan for which a partial claim payment is requested must be a guaranteed loan that was either—

(1) Current or less than 30 days past due on March 1, 2020; or

(2) Made on or after March 1, 2020;

(b) The veteran on whose behalf VA will pay a partial claim payment both received a COVID-19 forbearance and missed at least one scheduled monthly payment;

(c) There remains unpaid at least one scheduled monthly payment that the veteran did not make while under a COVID-19 forbearance;

(d) The veteran indicates that the veteran can resume making scheduled monthly payments, on time and in full, and that the veteran occupies, as the veteran's residence, the property securing the guaranteed loan for which the partial claim payment is requested; and

(e) The veteran executes, in a timely manner, all loan documents necessary to establish an obligation to repay the Secretary for the partial claim payment.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4804 Partial claim payment as a home retention option.

(a) The Veterans Assistance Partial Claim Payment program is designed to address the financial hardships due,

directly or indirectly, to the COVID-19 national emergency. A servicer may therefore use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest.

(b) If the veteran notifies the servicer that the veteran does not want to retain ownership of the property securing the guaranteed loan, the servicer may immediately proceed to offering an alternative to foreclosure.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4805 Terms of the partial claim payment.

(a) In order for a partial claim payment to be payable, the servicer must submit to the Secretary, not later than 120 days after the date the veteran exits the COVID-19 forbearance, a request for such payment, as prescribed in § 36.4807.

(b) The amount of the partial claim payment that VA will pay to the servicer, as calculated under paragraph (e) of this section, shall not exceed 30 percent of the unpaid principal balance of the guaranteed loan. For the purposes of this paragraph (b), the unpaid principal balance of the guaranteed loan means such balance as of the date the veteran entered into a COVID-19 forbearance.

(c) VA will pay only one partial claim payment per guaranteed loan.

(d) VA will pay only one partial claim payment per veteran.

(e)(1) Because VA will pay only one partial claim payment per guaranteed loan, and only one partial claim payment per veteran, a servicer must, when calculating the amount of partial claim payment to be paid by VA to the servicer, include the full amount of indebtedness that is necessary to bring the guaranteed loan current.

(2) To bring the guaranteed loan current, servicers must include the full COVID-19 indebtedness, comprising—

(i) All scheduled but missed monthly payments of principal and interest; and

(ii) As applicable, all scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, or where the guaranteed loan documents do not provide for monthly escrowing, all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf, during the COVID-19 forbearance.

(3) Also in bringing the guaranteed loan current, servicers must include—

(i) All scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31

days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806;

(ii) If applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed on or after March 1, 2020, but before the veteran was granted the COVID-19 forbearance; and

(iii) The actual amount of recording fees, recording taxes, or other charges levied by the recording authority, that must be paid in order to record the security instrument described in § 36.4806.

(4) Except for amounts identified in paragraphs (e)(2) and (3) of this section, servicers shall not include any amounts (e.g., fees, penalties, or interest) beyond the amounts scheduled or calculated as if the veteran made all contractual payments on time and in full under the terms of the guaranteed loan.

(5) Nothing in this section shall preclude a veteran from making an optional payment or a servicer from waiving a veteran's indebtedness, such that the amount of partial claim payment would not exceed the 30 percent cap described in paragraph (b) of this section.

(6) If the servicer miscalculates the partial claim amount, resulting in an overpayment to the servicer, the amount of such overpayment shall constitute a liability of the servicer to the United States. The servicer must remit the overpaid amount immediately to VA.

(7) If the servicer miscalculates the partial claim amount, resulting in underpayment (i.e., an amount insufficient to bring the guaranteed loan current), the servicer must waive the difference.

(8) Servicers shall not include any amounts for a monthly payment that is scheduled to be paid on a date that is more than 31 days after the servicer provides to the veteran the note and security instrument described in § 36.4806.

(f) The servicer must prepare a note and security instrument in favor of the "Secretary of Veterans Affairs, an Officer of the United States". The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(1) The note must be consistent with the terms described in § 36.4806 and include all borrowers who are obligated on the guaranteed loan; and

(2) The security instrument must include all persons (borrowers, as well as non-borrowers) who hold a title interest in the property securing the guaranteed loan.

(g) Subject to paragraph (a) of this section, all loan documents must be fully executed not later than 90 days after the veteran exits the COVID-19 forbearance.

(h) The servicer must record the security instrument timely, as prescribed in § 36.4807.

(i) The servicer must not charge, or allow to be charged, to the veteran any fee in connection with the COVID-19 Veterans Assistance Partial Claim Payment program.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4806 Terms of the assistance to the veteran.

(a) If a veteran chooses to accept VA's assistance (*i.e.*, a partial claim payment to the servicer, on the veteran's behalf), the veteran, and all co-borrowers on the guaranteed loan, must execute a note and security instrument in favor of the "Secretary of Veterans Affairs, an Officer of the United States". The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(b) Specific terms of the note and security instrument shall include the following:

(1) The amount to be repaid to the Secretary, by the veteran, is the amount calculated under § 36.4805(e);

(2) Repayment in full is required immediately upon—

(i) The veteran's transfer of title to the property; or

(ii) The refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated.

(3) A veteran may make payments for the subordinate loan, in whole or in part, without charge or penalty. If the veteran makes a partial prepayment, there will be no changes in the due date unless VA agrees in writing to those changes.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4807 Application for partial claim payment.

(a) The servicer must provide VA with the original note required by § 36.4805. Not later than 180 days following the date the security instrument, required by § 36.4805, is fully executed, the servicer must provide VA with the original security instrument and evidence that the servicer recorded such

instrument. If the recording authority causes a delay, the servicer may request an extension of time, in writing, from VA.

(b) Servicers must report a partial claim event to VA through VA's existing electronic loan servicing system within seven days of the date the veteran returns to the servicer the executed note required by § 36.4805, but not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0021 and 2900-XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4808 No effect on the servicing of the guaranteed loan.

(a) Servicers must continue to service the guaranteed loan in accordance with subpart B of this part.

(b) The liability of the United States for any guaranteed loan shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the guaranteed loan. A partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made.

(c) Receipt of a partial claim payment shall not eliminate a servicer's option under 38 U.S.C. 3732 to convey to the Secretary the security for the guaranteed loan.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.

(a) Subject to paragraph (b) of this section, the Secretary will not accept a request for a partial claim payment after the date that is 180 days after the date the COVID-19 national emergency ends under the National Emergencies Act, 50 U.S.C. 161.

(b) If a veteran's COVID-19 forbearance does not end until after the date described in paragraph (a) of this section, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Secretary will not accept a request for a partial claim payment after October 28, 2022.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to a partial claim

payment that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)

[FR Doc. 2021-11373 Filed 5-27-21; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-R08-OAR-2021-0267; FRL-10024-01-Region 8]

Clean Air Act New Source Review Operating Permit Program; Notice of Transfer of Permits to Wyoming Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is granting Wyoming Department of Environmental Quality's (WDEQ) August 21, 2020 request to transfer to the State administrative authority over two existing federal permits that were issued by the EPA on June 26, 1973 under the federal new source review (NSR) permitting program. In addition, the EPA is agreeing with WDEQ's analysis in its August 21, 2020 letter demonstrating that the current Wyoming regulations still meet the requirements of the federal

NSR permitting program. This action transfers the 1973 federally issued permits to Wyoming. The EPA is taking this action in accordance with the Clean Air Act (CAA) and the Code of Federal Regulations NSR program requirements. This is a direct final action because the action is deemed noncontroversial.

DATES: This rule is effective on July 27, 2021 without further notice, unless the EPA receives adverse written comments on or before June 28, 2021. If adverse comments are received, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0267. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT:

Donald Law, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-PM, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7015, law.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” mean the EPA.

I. Why is EPA using a direct final rule?

The EPA is publishing this rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the Proposed Rules section of today’s **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to grant WDEQ’s request to transfer to the State administrative authority over two federal permits if the EPA receives adverse comments. This rule will be effective on July 27, 2021 without further notice unless we receive adverse comments by June 28, 2021. If the EPA receives adverse comments, the EPA will publish a timely withdrawal in the **Federal Register** informing the public

that this direct final rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Background

On April 30, 1971, the EPA Administrator promulgated national ambient air quality standards (NAAQS) for several pollutants.¹ The EPA’s action triggered requirements for states to adopt and submit plans to the EPA providing for the implementation, maintenance and enforcement of those NAAQS within their state borders.² The EPA also promulgated regulations prescribing the requirements for the preparation, adoption and submittal of state plans.³

On January 26, 1972, Wyoming submitted its state implementation plan (SIP) to the EPA, followed by plan supplements on March 28 and May 3, 1972. On May 31, 1972, the EPA approved parts of Wyoming’s SIP and disapproved other parts. The EPA found that Wyoming did not demonstrate that it had the legal authority to carry out its SIP as required under 40 CFR 51.11(a)(4)(1972)⁴ to prevent the construction of new sources and the modification of existing sources, and that Wyoming did not include legally enforceable procedures to prevent the construction of a new source or modification of an existing source under 40 CFR 51.18(1972).⁵ Review of New Sources and Modifications. On September 22, 1972, the EPA added paragraph (b) to 40 CFR 52.2625(1972)⁶ to provide for federal review of new

sources and modifications of sources in Wyoming.⁷

On July 26, 1973, the EPA approved two trona (trisodium hydrogencarbonate dihydrate) plant facility expansion applications and issued permits under 40 CFR 52.2625(b)(1972), each bearing the same permit number of “8A–EE.” One permit was originally issued to Allied Chemical Corporation and is now held by TATA Chemicals Soda Ash Partners, and the other permit was originally issued to FMC Corporation and is now held by Genesis Alkali Wyoming, LP.

On June 10, 1975, the EPA approved Wyoming’s NSR regulations finding that Wyoming’s NSR regulations satisfied the requirements of 40 CFR 51.18 for direct sources.^{8,9} In the 1975 **Federal Register** document, the EPA also withdrew the federal NSR program under 40 CFR 52.2625(b)(1972). The 1975 federal rulemaking was silent on the existing federal permits issued under the now superseded federal NSR program for Wyoming under 40 CFR 52.2625(b)(1972).

In an August 21, 2020 letter, WDEQ requested the EPA transfer to the State administrative authority over two existing federal permits that were issued by the EPA on June 26, 1973 under the federal NSR permitting program.^{10,11} In its letter, as well as in Wyoming’s 1975 approved SIP, WDEQ outlined how its stationary source permitting rules in Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations provide WDEQ with the authority to administer air permits, including the two 8A–EE permits originally issued by the EPA. Specifically, the provisions of Chapter 6, section 2 satisfy all the requirements of 40 CFR 51.18 for federally approved permit programs as the EPA previously determined in order to have granted Wyoming authority for implementation of the NSR program. WDEQ has authority to issue permits and impose conditions in those permits in order to ensure the maintenance or attainment of national and state ambient air quality standards. In addition, WDEQ also has authority to enforce these permits under Wyoming Statutes Annotated 35–11–901.

⁷ 37 FR 19806.

⁸ 40 FR 24726.

⁹ The EPA did not find that Wyoming’s new source review procedures for indirect sources met the requirements of 40 CFR 51.18.

¹⁰ Letter dated August 21, 2020, from Nancy E. Vehr, Director, Wyoming Air Quality Division, WDEQ, to Carl Daly, Acting Director, Air and Radiation Division, EPA, Region 8, Subject: “Permits 8A–EE issued on July 26, 1973 to Allied Chemical Corporation and to FMC Corporation.”

¹¹ 40 CFR 52.2625(b) (1972).

¹ 36 FR 8186.

² See 42 U.S.C. 7410.

³ See 36 FR at 15486 (Aug. 14, 1971), 20513 (Oct. 23, 1971), and 25233 (Dec. 30, 1971).

⁴ Part 51 has since been revised and 40 CFR 51.11(a)(4)(1972) has been deleted. See https://www.ecfr.gov/cgi-bin/text-idx?SID=d5a8b4c159130810aa406765662e57a9&mc=true&tpl=/ecfrbrowse/Title40/40cfr51_main_02.tpl for current version. See the docket for the 1972 CFR version of this provision.

⁵ Part 51 has since been revised and 40 CFR 51.18 (1972) has been deleted. See https://www.ecfr.gov/cgi-bin/text-idx?SID=d5a8b4c159130810aa406765662e57a9&mc=true&tpl=/ecfrbrowse/Title40/40cfr51_main_02.tpl for current version. See the docket for the 1972 CFR version of this provision.

⁶ Part 52 has since been revised and 40 CFR 52.2625(1972) has been deleted. See https://www.ecfr.gov/cgi-bin/text-idx?SID=d443b4700a12af6eb2b751a68c&mc=true&node=se40.5.52_12625&rgn=div8 for the current version. See the docket for the 1972 CFR version of this provision.

III. EPA Evaluation

In its August 21, 2020 letter, WDEQ requested that EPA formally transfer authority to WDEQ for the two July 26, 1973 permits issued under the federal NSR program at 40 CFR 52.2625(b)(1972) based upon the EPA's 1975 approval of Wyoming's NSR program and deletion of the federal NSR program as well as a demonstration that Wyoming's current regulations still meet the requirements of a federally approved permit program as required under 40 CFR 51.11(a)(4) and 51.18. WDEQ's request for the transfer of the federally-issued permits under 40 CFR 52.2625(b)(1972) to Wyoming includes the request to transfer the authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits (*e.g.* modifications, amendments, or revisions of any nature) and authority to enforce such permits.

In its August 21, 2020 letter, WDEQ provided that Wyoming's stationary source permitting rules contained within its SIP including Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations, provide WDEQ the authority to administer all permits, including the two 8A–EE permits originally issued by the EPA. Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations authorizes WDEQ to issue permits and impose conditions in those permits in order to ensure the maintenance or attainment of national and state ambient air quality standards which the EPA approved in 1975.¹² WDEQ has authority to enforce these permits under Wyoming Statutes Annotated 35–11–901. This is in keeping with the requirements of 40 CFR 51.18 which requires state programs to have the ability to impose permit conditions to maintain the national and state ambient air quality standards. We agree with the State's findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.18.

In addition, Wyoming asserts that Wyoming's Chapter 6, section 2(c)(ii) requirements satisfy the requirements of 40 CFR 51.11(a)(4) and 51.18(a). Wyoming's Chapter 6, section 2(c)(ii) states that “[n]o approval to construct or modify will be granted unless the applicant shows, to the satisfaction of the Administrator of the Division of Air Quality that . . . the proposed facility will not prevent the attainment or maintenance of any ambient air quality standard.” Under 40 CFR 51.18(a), plans

are required to set forth legally enforceable procedures to be used to implement the provisions of 40 CFR 51.11(a)(4). 40 CFR 51.11(a)(4) provides that the permitting entity must have the authority to “[p]revent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard.” Since Wyoming's SIP sets forth legally enforceable procedures to implement the authority to “[p]revent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard,” we agree with the State's findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.11(a)(4) and 51.18(a).

Wyoming also states that Chapter 6, section 2(b)(i) of the Wyoming Air Quality Rules and Regulations is analogous to 40 CFR 51.18(b) which requires plans to contain provisions that require applicants to submit information on the nature and amounts of emissions, locations, design, construction and operation of such sources as may be necessary to permit the state agency to make the determination referred to in 40 CFR 51.18(a). We agree with the State's findings that Chapter 6, Section 2 continues to satisfy the requirements of 40 CFR 51.18(b).

Wyoming also provides in their August 21, 2020 letter that Chapter 6, section 2(c)(ii) of the Wyoming Air Quality Rules and Regulations meets the requirements of 40 CFR 51.18(c) requiring state permitting agencies to have the authority to deny approval of construction of new sources or modification of existing sources that would result in interference with the attainment of maintenance of national standards. Chapter 6, section 2(c)(ii) of the Wyoming Air Quality Rules and Regulations states that approval will not be granted unless the applicant demonstrates the construction or modification will not prevent attainment or maintenance of national standards. We agree with the State's findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.18(c).

Lastly, Wyoming states that Chapter 6, section 2(l) of the Wyoming Air Quality Standards and Regulations meets the requirements of 40 CFR 51.18(d) which states that an approval or any construction of modification must not affect the responsibility of the applicant to comply with applicable portions of the control strategy. Wyoming's Chapter 6, section 2(l) of the Wyoming Air

Quality Standards and Regulations, states that “[a]pproval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, state, and federal rules and regulations.” We agree with the State's findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.18(d).

Pursuant to the criteria under section 110(a)(2)(E)(i) of the Clean Air Act, we have determined that WDEQ has the authority, personnel and funding to implement the NSR program for direct sources within Wyoming for existing EPA-issued permits under 40 CFR 52.2625(b)(1972). This is based upon the EPA's June 10, 1975 approval of Wyoming Air Quality Standards and Regulations, (1974) whereby the EPA approved Wyoming's NSR program for direct sources and deleted EPA's federal NSR program under § 52.2625(b)(1972).¹³ In our 1975 rulemaking, we determined that Wyoming's regulations met the requirement that Wyoming's SIP include procedures to assure that the construction or modification of new or existing stationary sources would not interfere with the attainment or maintenance of the NAAQS as required under 40 CFR 51.18. In addition, we have determined that Wyoming has demonstrated that its SIP and Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations provide WDEQ the authority to administer all permits, including the two permits issued by the EPA under 40 CFR 52.2625(b)(1972) on July 26, 1973.

IV. Final Action

Based on our finding that WDEQ has met the criteria under section 110(a)(2)(E)(i) of the CAA and that WDEQ has the authority, personnel and funding to implement the NSR program within Wyoming for existing EPA-issued permits under 40 CFR 52.2625(b)(1972), the two EPA-issued permits, both numbered 8A–EE, will be transferred to Wyoming upon the effective date of this rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a state NSR program submittal that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing NSR program submittals, the EPA's role is to approve state choices, provided they meet the criteria of the CAA and the criteria, standards and procedures defined in 40 CFR parts 51 and 52.

¹² 40 FR 24726 (June 10, 1975).

¹³ 40 FR 24726.

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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- 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, this action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by July 27, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Opacity, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 20, 2021.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2021–11193 Filed 5–27–21; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 86, No. 102

Friday, May 28, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0383; Project Identifier 2018-SW-005-AD]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model AW189 helicopters. This proposed AD was prompted by corrosion on the inlet check valve banjo fitting of emergency flotation system (EFS) float assemblies. This proposed AD would require visually inspecting each banjo fitting installed on an affected EFS float assembly, and depending on the results, removing the banjo fitting from service. This proposed AD would also require applying corrosion inhibiting compound to each banjo fitting installed on an affected EFS float assembly and prohibit installing an affected EFS float assembly unless the banjo fitting inspection, banjo fitting replacement, and corrosion inhibiting compound application requirements have been accomplished as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 12, 2021.

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

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

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

For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. For Aero Sekur and Leonardo Helicopters service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://www.leonardocompany.com/en/home>. You may view the Aero Sekur, EASA, and Leonardo Helicopters material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of the Aero Sekur, EASA, and Leonardo Helicopters material at the FAA, call (817) 222-5110. The EASA material is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0383.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0383; 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 EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Kristi Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email kristin.bradley@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2021-0383; Project Identifier 2018-SW-005-AD" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kristi Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email kristin.bradley@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

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of ADs, the most recent being EASA AD 2018–0006, dated January 10, 2018 (EASA AD 2018–0006), to correct an unsafe condition for Leonardo S.p.A. Helicopters (formerly Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW189 helicopters with certain part-numbered and serial-numbered Aero Sekur EFS float assemblies installed, except those float assemblies marked with SB–189–25–004. EASA initially issued EASA AD 2017–0256, dated December 22, 2017 (EASA AD 2017–0256), to address the unsafe condition. EASA issued EASA AD 2018–0006 to supersede EASA AD 2017–0256 to revise the compliance time based on the EFS float assembly condition.

This proposed AD was prompted by corrosion on the inlet check valve banjo fitting of EFS float assemblies. The FAA is proposing this AD to prevent reduced inflation of an EFS float, which if not addressed, could affect the helicopter's buoyancy during an emergency landing on water. See EASA AD 2018–0006 for additional background information.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

EASA AD 2018–0006 requires visually inspecting the banjo fittings installed on an affected EFS float assembly. If there is corrosion on a banjo fitting, EASA AD 2018–0006 requires replacing the banjo fitting. EASA AD 2018–0006 also requires applying corrosion inhibiting compound to each banjo fitting installed on an affected EFS float assembly. EASA AD 2018–0006 prohibits installing an affected EFS float assembly unless the banjo fitting inspection, banjo fitting replacement, and corrosion inhibiting compound application requirements have been accomplished. EASA AD 2018–0006 also allows credit for actions accomplished previously

with a prior revision of the Leonardo Helicopters service information.

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

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 189–174, original issue, dated December 22, 2017 (ASB 189–174 original issue), and Revision A, dated January 5, 2018 (ASB 189–174 Rev A). The FAA also reviewed Aero Sekur Service Bulletin SB–189–25–004, original issue, dated November 22, 2017 (SB–189–25–004), which is attached as Annex A to ASB 189–174 original issue and ASB 189–174 Rev A.

ASB 189–174 Rev A and ASB 189–174 original issue specify the same procedures, except the compliance time specified by ASB 189–174 Rev A has been revised by adding affected EFS float assemblies that have been inspected by procedures in the maintenance manual within the previous 12 months. ASB 189–174 original issue and ASB 189–174 Rev A specify accomplishing the Visual Inspection and Corrosion Prevention, and Record Instruction procedures specified in SB–189–25–004. ASB 189–174 original issue and ASB 189–174 Rev A also specify emailing photographic evidence of each corroded banjo fitting to Leonardo Helicopters PSE Division and returning replaced banjo fittings to Leonardo Helicopters Customer Support Division.

SB–189–25–004 specifies procedures for cleaning and visually inspecting each banjo fitting for evidence of corrosion. If there is corrosion, SB–189–25–004 specifies procedures for discarding the banjo fitting and its O-rings, and installing a new banjo fitting. SB–189–25–004 also specifies procedures for applying corrosion inhibiting compound (JC5A or Mastinox 6856) on all banjo fittings. When SB–189–25–004 is accomplished, SB–189–25–004 specifies procedures for marking the identification label of the EFS float assembly.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0006, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under “Differences

Between this Proposed AD and the EASA 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 certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2018–0006 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2018–0006 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 EASA AD 2018–0006 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 2018–0006. Service information specified in EASA AD 2018–0006 that is required for compliance with it will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0383 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2018–0006 requires returning and discarding certain parts, whereas this proposed AD would require removing those parts from service instead.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 4 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting the banjo fittings would take about 8.5 work-hours for an estimated cost of \$723 per helicopter and \$2,892 for the U.S. fleet. Applying corrosion inhibiting compound would take about 1.5 work-hours for an estimated cost of \$128 per helicopter and \$512 for the U.S. fleet. If required, replacing a banjo fitting would take a minimal additional amount of time after inspecting it and parts would cost about

\$550 for an estimated cost of \$550 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2021–0383; Project Identifier 2018–SW–005–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 12, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AW189 helicopters, certificated in any category, as identified in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0006, dated January 10, 2018 (EASA AD 2018–0006).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 3212, Emergency Flotation Section.

(e) Unsafe Condition

This AD was prompted by corrosion on the inlet check valve banjo fitting of emergency flotation system (EFS) float assemblies. The FAA is issuing this AD to prevent reduced inflation of an EFS float. The unsafe condition, if not addressed, could affect the helicopter's buoyancy during an emergency landing on water.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0006.

(h) Exceptions to EASA AD 2018–0006

(1) Where EASA AD 2018–0006 refers to December 29, 2017 (the effective date of EASA AD 2017–0256, dated December 22, 2017), this AD requires using the effective date of this AD.

(2) Where the service information referenced in EASA AD 2018–0006 specifies to return a certain part, this AD requires removing that part from service.

(3) Where the service information referenced in EASA AD 2018–0006 specifies to discard certain parts, this AD requires removing those parts from service.

(4) The "Remarks" section of EASA AD 2018–0006 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2018–0006 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve

AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(k) Related Information

(1) For EASA AD 2018–0006, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0383.

(2) For more information about this AD, contact Kristi Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email kristin.bradley@faa.gov.

Issued on May 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–11198 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0381; Project Identifier MCAI–2020–01656–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 adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent XWB–75, Trent XWB–79, Trent XWB–79B, and Trent XWB–84 model turbofan engines. This proposed AD was prompted by reports

of cracks in the intermediate-pressure compressor (IPC) rotor 1 (R1) blades installed on certain Trent XWB model turbofan engines. This proposed AD would require initial and repetitive borescope inspections (BSIs) of the affected IPC R1 blades and, depending on the results of the inspections, replacement of all 34 IPC R1 blades. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 12, 2021.

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

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

For service information identified in this NPRM, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; email: <https://www.rolls-royce.com/contact-us/civil-aerospace.aspx>; website: <https://www.rolls-royce.com/contact-us.aspx>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7759.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0381; 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.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7088; fax: (781) 238-7199; email: kevin.m.clark@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 the **ADDRESSES** section. Include "Docket No. FAA-2021-0381; Project Identifier MCAI-2020-01656-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 NPRM because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020-0277, dated December 11, 2020 (referred to after this as "the MCAI"), to address the unsafe condition on these products. The MCAI states:

Occurrences have been reported of finding cracked IPC R1 blades on certain Trent XWB

engines that were close to their first planned refurbishment shop visit.

This condition, if not corrected, could lead to blade failure and consequent engine in-flight shut-down (IFSD), possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition and avoid dual engine IFSD, Rolls-Royce issued the inspection NMSB to provide inspection instructions and the NMSB to provide information on threshold and intervals.

For the reasons described above, this [EASA] AD requires repetitive inspections of the affected parts and, depending on findings, accomplishment of applicable corrective action(s).

You may obtain further information by examining the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0381.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Community, EASA has notified the FAA of the unsafe condition described in the MCAI and service information. The FAA is issuing this NPRM because the agency evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rolls-Royce Non-Modification Service Bulletin (NMSB) Trent XWB 72-K633, Initial Issue, dated August 7, 2020. This service information specifies procedures for performing initial and repetitive BSIs of the Trent XWB-75, XWB-79, XWB-79B, and XWB-84 IPC R1 blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Rolls-Royce Alert NMSB Trent XWB 72-AK612, Initial Issue, dated July 9, 2020; Rolls-Royce Alert NMSB Trent XWB 72-AK613, Initial Issue, dated July 17, 2020; and Rolls-Royce Alert NMSB Trent XWB 72-AK632, Initial Issue, dated August 7, 2020.

Rolls-Royce Alert NMSB Trent XWB 72-AK612 describes procedures for performing a BSI of the Trent XWB-84 IPC R1 blades. Rolls-Royce Alert NMSB Trent XWB 72-AK613 describes procedures for performing a BSI of the

Trent XWB-75, XWB-79, XWB-79B, and XWB-84 IPC R1 blades. Rolls-Royce Alert NMSB Trent XWB 72-AK632 defines the initial inspection threshold and repeat inspection intervals for Trent XWB-75, XWB-79, XWB-79B, and XWB-84 IPC R1 blades.

Proposed AD Requirements in This NPRM

This proposed AD would require initial and repetitive BSIs of the affected IPC R1 blades and, depending on the

results of the inspections, replacement of all 34 IPC R1 blades with parts eligible for installation.

Differences Between This Proposed AD and the MCAI or Service Information

EASA AD 2020-0277, dated December 11, 2020, and Rolls-Royce NMSB Trent XWB 72-K633, Initial Issue, dated August 7, 2020, instruct operators to contact and provide information to Rolls-Royce if any IPC R1 blade is found cracked during the

inspection, while this proposed AD requires operators to remove and replace all 34 IPC R1 blades if a crack is found during the inspection.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 15 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
BSI affected IPC R1 blades	6 work-hours × \$85 per hour = \$510	\$0	\$510	\$7,650

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspection. The FAA has no way of determining the

number of aircraft that might need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace all 34 IPC R1 blades	100 work-hours × \$85 per hour = \$8,500	\$187,408	\$195,908

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Docket No. FAA-2021-0381; Project Identifier MCAI-2020-01656-E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 12, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc) Trent XWB-75, Trent XWB-79, Trent XWB-79B, and Trent XWB-84 model turbofan engines with an installed intermediate-pressure compressor (IPC) rotor 1 (R1) blade, part number (P/N) KH21559.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks in the IPC R1 blades installed on certain Trent XWB model turbofan engines. The FAA is issuing this AD to prevent failure of the IPC R1 blades. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown of the engine, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, perform an initial borescope inspection (BSI) of the affected IPC R1 blades using the

Accomplishment Instructions, paragraphs 3.A.(3)(b) and (c) (on-wing) or 3.B.(2)(b) and (c) (in-shop), as applicable, of Rolls-Royce Non-Modification Service Bulletin Trent XWB 72–K633, Initial Issue, dated August 7, 2020.

Figure 1 to Paragraph (g)(1) – Inspection threshold

Flight cycles (FCs) since new	Compliance time
Less than 2,300 FCs since new	Before exceeding 2,300 FCs since new, or within 50 FCs after the effective date of this AD, whichever occurs later
2,300 or more FCs since new	Within 50 FCs after the effective date of this AD

(2) Thereafter, repeat the BSI of the affected IPC R1 blades required by paragraph (g)(1) of this AD before exceeding 200 engine FCs since the last BSI of the affected IPC R1 blades.

(3) If, during any inspection required by paragraph (g)(1) or (2) of this AD, any affected IPC R1 blade is found cracked, remove all 34 IPC R1 blades from service and replace with parts eligible for installation.

Note 1 to paragraph (g): The FCs specified in Figure 1 to paragraph (g)(1) of this AD are those accumulated by the affected IPC R1 blade having the highest flight cycles in the IPC R1 blade set since the first installation of the affected blade on an engine. When the FCs of the affected IPC R1 blade set cannot be established, use the FCs accumulated by the engine since new.

(h) Definition

For the purpose of this AD, a part eligible for installation is any IPC R1 blade having P/N KH21559 with zero engine FCs since new, any IPC R1 blade having P/N KH21559 that has been inspected in accordance with paragraph (g)(1) of this AD and a crack was not found, or any IPC R1 blade having a P/N not listed in this AD.

(i) Credit for Previous Actions

You may take credit for the initial BSI required by paragraph (g)(1) of this AD if you performed the initial BSI before the effective date of this AD using Rolls-Royce Alert Non-Modification Service Bulletin (NMSB) Trent XWB 72–AK612, Initial Issue, dated July 9, 2020, or Rolls-Royce Alert NMSB Trent XWB 72–AK613, Initial Issue, dated July 17, 2020, as applicable.

(j) Alternative Methods of Compliance (AMOCs)

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

identified in Related Information. You may email your request to: ANE-AD-AMOC@faa.gov.

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

(k) Related Information

(1) For more information about this AD, contact Kevin Clark, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: kevin.m.clark@faa.gov.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0277, dated December 11, 2020, for more information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No. FAA–2021–0381.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; email: <https://www.rolls-royce.com/contact-us/civil-aerospace.aspx>; website: <https://www.rolls-royce.com/contact-us.aspx>. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Issued on May 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–11158 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2021–0444; Project Identifier MCAI–2020–01601–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by reports of wear damage found between the bonding clamps and the fuel feed tubes inside the left- and right-hand fuel tanks. This proposed AD would require repetitive inspections of the fuel feed tubes for damage, replacement if necessary, and modification of the fuel feed line installation inside the left- and right-hand fuel tanks, which would terminate the repetitive inspections, as specified in a Transport Canada Civil Aviation (TCCA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 12, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202–493–2251.

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

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, Canada; telephone 888–663–3639; email AD-CN@tc.gc.ca; internet <https://tc.canada.ca/en/aviation>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0444.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0444; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Joseph Catanzaro, Aviation Safety Engineer, Airframe & Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0444; Project Identifier MCAI–2020–01601–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider

all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Catanzaro, Aerospace Engineer, Airframe & Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email 9-avs-nyaco-cos@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2019–19R1, issued November 1, 2019 (TCCA AD CF–2019–19R1) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

This proposed AD was prompted by reports of wear damage found between the bonding clamps and the fuel feed tubes inside the left- and right-hand fuel tanks. In one incident, the wear damage resulted in a hole in the main engine feed tube located in the collector tank, and subsequent fuel imbalance during flight. Service experience indicates that

a number of fuel feed tubes inside both of the fuel tanks are exposed to chafing damage, which may lead to failure of the fuel feed tube. The FAA is proposing this AD to address failure of certain fuel feed tubes, which could lead to a severe fuel imbalance or fuel starvation of one engine, or in the event of the failure of multiple fuel tubes feeding both engines, could result in an in-flight shutdown of both engines. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2019–19R1 describes procedures for repetitive inspections of the fuel feed tubes for damage, replacement if any damage is found, and modification of the fuel feed line installation inside the left- and right-hand fuel tanks, which would terminate the repetitive inspections.

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

FAA’s Determination and Requirements of This Proposed AD

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, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in TCCA AD CF–2019–19R1 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and the European Union Aviation Safety Agency (EASA) to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated

with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, TCCA AD CF–2019–19R1 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with TCCA AD CF–2019–19R1 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Service information specified in TCCA AD CF–2019–19R1 that is required for compliance with TCCA AD CF–2019–19R1 will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0444 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD affects 46 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 91 work-hours × \$85 per hour = Up to \$7,735	Up to \$15,265	Up to \$23,000	Up to \$1,058,000.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × \$85 per hour = \$255	Up to \$77,000	Up to \$77,255.

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) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2021–0444; Project Identifier MCAI–2020–01601–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 12, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2019–19R1, issued November 1, 2019 (TCCA AD CF–2019–19R1).

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of wear damage found between the bonding clamps and the fuel feed tubes inside the left- and right-hand fuel tanks. In one incident, the wear damage resulted in a hole in the main engine fuel feed tube located in the collector tank, and subsequent fuel imbalance during flight. The FAA is issuing this AD to address failure of certain fuel feed tubes, which could lead to a severe fuel imbalance or fuel starvation of one engine, or in the event of the failure of multiple fuel tubes feeding both engines, could result in an in-flight shutdown of both engines.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, TCCA AD CF-2019-19R1.

(h) Exceptions to TCCA AD CF-2019-19R1

(1) Where TCCA AD CF-2019-19R1 refers to the effective date of TCCA AD CF-2019-19 (May 27, 2019), this AD requires using the effective date of this AD.

(2) Where TCCA AD CF-2019-19R1 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where TCCA AD CF-2019-19R1 refers to hours air time, this AD requires using flight hours.

(4) Where TCCA AD CF-2019-19R1 specifies rectifying "any noted discrepancy," for this AD discrepancies are "damage, cracks, scores, scratches, nicks, and gouges."

(i) No Reporting Requirement

Although the service information referenced in TCCA AD CF-2019-19R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516-228-7300; fax: 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) For information about TCCA AD CF-2019-19R1 contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email AD-CN@tc.gc.ca; internet <https://tc.canada.ca/en/aviation>. You may view this material 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. This material may be found in the AD docket at [https://](https://www.regulations.gov)

www.regulations.gov by searching for and locating Docket No. FAA-2021-0444.

(2) For more information about this AD, contact Joseph Catanzaro, Aviation Safety Engineer, Airframe & Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7366; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

Issued on May 24, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021-11237 Filed 5-27-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2021-0413; Airspace Docket No. 21-ASW-9]

RIN 2120-AA66

Proposed Amendment of Class D and Class E Airspace and Establishment of Class E Airspace; Waco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace and establish Class E airspace at airports in Waco, TX. The FAA is proposing this action as the result of biennial airspace reviews. The name and geographic coordinates of various airports and navigational aids would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 12, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2021-0413/Airspace Docket No. 21-ASW-9, at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed

online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace and Class E surface area airspace at Waco Regional Airport, Waco, TX; establish Class E surface area airspace at TSTC Waco Airport, Waco, TX; establish Class E airspace extending upward from 700 feet above the surface at Marlin Airport, Waco, TX; and amend the Class E airspace extending upward from 700 feet above the surface at Waco Regional Airport, TSTC Waco Airport, and McGregor Executive Airport, Waco, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2021-0413/Airspace Docket No. 21-ASW-9." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace to within a 4.2-mile (decreased from a 4.5-mile) radius of Waco Regional Airport, Waco, TX; adding an extension 1 mile each side of the 149° bearing from the airport extending from the 4.2-mile radius to 4.3 miles southeast of the airport; removing the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Amending the Class D airspace legal description at TSTC Waco Airport, Waco, TX, by removing the airport name from the airspace legal description header to comply with changes to FAA Order 7400.2M; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order 7400.2M; updating the name of the airport (previously TSTC-Waco Airport) to coincide with the FAA's aeronautical database; and replacing the outdated term "Airfield/Facility Directory" with "Chart Supplement";

Amending the Class E surface area airspace to within a 4.2-mile (decreased from a 4.5-mile) radius of Waco Regional Airport; adding an extension 1 mile each side of the 149° bearing from the airport extending from the 4.2-mile radius to 4.3 miles southeast of the airport; removing the TSTI-Waco Airport, Waco, TX, and the associated airspace from the airspace legal description (A separate airspace legal description is being created to reduce confusion regarding Class D and E service availability at the two airports.); and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Establishing Class E surface area airspace within a 4.4-mile radius of TSTC Waco Airport;

Establishing Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Marlin Airport, Waco, TX; and within 1.8 miles each side of the 123° radial from the Waco VORTAC extending from the 6.3-mile radius from Marlin Airport to 13.1 miles northwest of the airport;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 11.5-mile) radius of Waco Regional Airport; removing the extension north of the VORTAC as it is no longer needed; adding an extension 3.7 miles each side of the 014° bearing from the Waco RGNL: RWY 19-LOC extending from the 6.7-mile radius from Waco Regional Airport to 15.3 miles north of the Waco Regional Airport;

adding an extension 2.5 miles each side of the 328° radial from the Waco VORTAC extending from the 6.7-mile radius from Waco Regional Airport to 10 miles northwest of the Waco VORTAC; within a 6.9-mile (decreased from a 7.9-mile) radius of TSTC Waco Airport; removing the Leroi NDB and the associated extension as they are no longer needed; adding an extension 1 mile each side of the 179° bearing from the McGregor Executive Airport, Waco, TX, extending from the 6.6-mile radius from McGregor Executive Airport to 6.7-miles south of McGregor Executive Airport; adding an extension 6 miles each side of the 005° radial from the Waco VORTAC extending from the Waco VORTAC to 10 miles north of the Waco VORTAC; and adding an extension 6 miles each side of the 185° radial from the Waco VORTAC extending from the 6.6 mile radius from the McGregor Executive Airport to the Waco VORTAC; removing the Marlin Airport and associated airspace from the airspace legal description as it no longer adjoins this airspace and separate airspace has been established for this airport; and updating the names of Waco Regional Airport (previously Regional Airport), TSTC Waco Airport (previously TSTC-Waco Airport) and McGregor Executive Airport (previously McGregor Municipal Airport) and the geographic coordinates of Waco Regional Airport and the Waco VORTAC to coincide with the FAA's aeronautical database.

These actions are the result of biennial airspace reviews.

Class D and E airspace designations are published in paragraph 5000, 6002, and 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Waco, TX [Amended]

Waco Regional Airport, TX
(Lat. 31°36'44" N, long. 97°13'49" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.2-mile radius of Waco Regional Airport, and within 1 mile each side of the 149° bearing from the airport extending from the 4.2-mile radius from the airport to 4.3 miles southeast of the airport. This Class D airspace area is effective during the specific dates in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Chart Supplement.

ASTW TX D Waco, TX [Amended]

TSTC Waco Airport, TX
(Lat. 31°38'16" N, long. 97°04'27" W)

That airspace extending upward from the surface to and including 3,000 feet MSL

within a 4.4-mile radius of TSTC Waco Airport, excluding that airspace within the Waco Regional Airport Class D airspace and Class E surface area airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW TX E2 Waco, TX [Amended]

Waco Regional Airport, TX
(Lat. 31°36'44" N, long. 97°13'49" W)

That airspace extending upward from the surface within a 4.2-mile radius of Waco Regional Airport, and within 1 mile each side of the 149° bearing from the airport extending from the 4.2-mile radius from the airport to 4.3 miles southeast of the airport. This Class E airspace area is effective during the specific dates in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Chart Supplement.

ASW TX E2 Waco, TX [Established]

TSTC Waco Airport, TX
(Lat. 31°38'16" N, long. 97°04'27" W)

That airspace extending upward from the surface within a 4.4-mile radius of TSTC Waco Airport, excluding that airspace within the Waco Regional Airport Class D airspace and Class E surface area airspace. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Waco, TX [Established]

Marlin Airport, TX
(Lat. 31°20'26" N, long. 96°51'07" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Marlin Airport, and within 1.8 miles each side of the 123° radial of the Waco VORTAC extending from the 6.3-mile radius to 13.1 miles northwest of the airport.

ASW TX E5 Waco, TX [Amended]

Waco Regional Airport, TX

(Lat. 31°36'44" N, long. 97°13'49" W)

Waco RGNL: RWY 19–LOC

(Lat. 31°36'07" N, long. 97°13'49" W)

Waco VORTAC

(Lat. 31°39'44" N, long. 97°16'08" W)

TSTC Waco Airport, TX

(Lat. 31°38'16" N, long. 97°04'27" W)

McGregor Executive Airport, TX

(Lat. 31°29'06" N, long. 97°19'00" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Waco Regional Airport, and within 3.7 miles each side of the 014° bearing from the Waco RGNL: RWY 19–LOC extending from the 6.7-mile radius of Waco Regional Airport to 15.3 miles north of Waco Regional Airport, and within 2.5 miles each side of the

328° radial from the Waco VORTAC extending from the 6.7-mile radius of Waco Regional Airport to 10 miles northwest of the Waco VORTAC, and within a 6.9-mile radius of McGregor Executive Airport, and within 1 mile each side of the 179° bearing from the McGregor Executive Airport extending from the 6.6-mile radius of McGregor Executive Airport to 6.7 miles south of McGregor Executive Airport, and within 6 miles each side of the 005° radial from the Waco VORTAC extending from the Waco VORTAC to 10 miles north of the Waco VORTAC, and within 6 miles each side of the 185° radial from the Waco VORTAC extending from the 6.6-mile radius of McGregor Executive Airport to the Waco VORTAC.

Issued in Fort Worth, Texas, on May 24, 2021.

Martin A. Skinner,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2021–11233 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0387; Airspace
Docket No. 21–AGL–24]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace, Revocation of Class E Airspace and Establishment of Class E Airspace; Carbondale and Marion, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D airspace and Class E airspace at Carbondale, IL, and Marion, IL; revoke the Class E airspace area designated as an extension to Class D airspace at Veterans Airport of Southern Illinois, Marion, IL; and establish Class E airspace extending upward from 700 feet above the surface at Southern Illinois Airport, Carbondale/ Murphysboro, IL. The FAA is proposing this action as the result of airspace reviews caused by the decommissioning of the Marion very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The names and geographic coordinates of the airports would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 12, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2021-0386/Airspace Docket No. 21-AGL-24 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace at Southern Illinois Airport, Carbondale/Murphysboro, IL, and Veterans Airport of Southern Illinois, Marion, IL; revoke the Class E airspace area designated as an extension to Class D airspace at

Veterans Airport of Southern Illinois; establish Class E airspace extending upward from 700 feet above the surface at Southern Illinois Airport; and amend the Class E airspace extending upward from 700 feet above the surface at Veterans Airport of Southern Illinois to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2021-0387/Airspace Docket No. 21-AGL-24." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center,

Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace to within a 4.2-mile (increased from a 4.1-mile) radius of Southern Illinois Airport, Carbondale/Murphysboro, IL; updating the header of the airspace legal description from "Carbondale, IL" to "Carbondale/Murphysboro, IL" to coincide with the FAA's aeronautical database; removing the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matter; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Amending the Class D airspace to within a 4.4-mile (increased from a 4.2-mile) radius of Veterans Airport of Southern Illinois, Marion, IL; removing the city associated with the airport to comply with changes to FAA Order 7400.2M; updating the name (previously Williamson County Regional Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Revoking the Class E airspace area designated as an extension to Class D airspace at Veterans Airport of Southern Illinois as it is no longer required;

Establishing Class E airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Southern Illinois Airport; and within 4 miles each side of the 181° bearing of the airport extending from the 6.7-mile radius to 11.8 miles south of the airport;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.9-mile radius of Veterans Airport of Southern Illinois; removing Southern Illinois Airport from the airspace legal description as a

separate airspace legal description is being established for this airspace; updating the name of the airport (previously Williamson County Regional Airport) to coincide with the FAA's aeronautical database; and removing the current airspace boundary to be replaced by the radius from the airport.

This action is necessary due to airspace reviews caused by the decommissioning of the Marion VOR as part of the VOR MON Program.

Class D and E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL IL D Carbondale/Murphysboro, IL [Amended]

Southern Illinois Airport, IL
(Lat. 37°46'41" N, long. 89°15'07" W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.2-mile radius of the Southern Illinois Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

AGL IL D Marion, IL [Amended]

Veterans Airport of Southern Illinois, IL
(Lat. 37°45'18" N, long. 89°00'40" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.4-mile radius of the Veterans Airport of Southern Illinois. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL IL E4 Marion, IL [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Carbondale/Murphysboro, IL [Established]

Southern Illinois Airport, IL
(Lat. 37°46'41" N, long. 89°15'07" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 4 miles each side of the 181° bearing from the airport

extending from the 6.7-mile radius to 11.8 miles south of the airport.

* * * * *

AGL IL E5 Marion, IL [Amended]

Veterans Airport of Southern Illinois, IL
(Lat. 37°45'18" N, long. 89°00'40" W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the airport.

Issued in Fort Worth, Texas, on May 24, 2021.

Martin A. Skinner,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2021–11231 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0386; Airspace
Docket No. 21–ASW–8]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Hondo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at South Texas Regional Airport at Hondo, Hondo, TX. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Hondo non-directional beacon (NDB). The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 12, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0386/Airspace Docket No. 21–ASW–8, at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at South Texas Regional Airport at Hondo, Hondo, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2021-0386/Airspace Docket No. 21-ASW-8." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at South Texas Regional Airport at Hondo, Hondo, TX, by removing the Hondo RBN, the Hondo VOR, and the associated extensions

from the airspace legal description as they are no longer required; and updating the name (previously Hondo Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Hondo NDB.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Hondo, TX [Amended]

South Texas Regional Airport at Hondo, TX (Lat. 29°21'33" N, long. 99°10'39" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the South Texas Regional Airport at Hondo.

Issued in Fort Worth, Texas, on May 24, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–11232 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0417; Airspace Docket No. 21–AGL–23]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Eveleth, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Eveleth-Virginia Municipal Airport, Eveleth, MN. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Eveleth non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 12, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0417/Airspace Docket No. 21–AGL–23 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Eveleth-Virginia Municipal Airport,

Eveleth, MN, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2021–0417/Airspace Docket No. 21–AGL–23." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within an 8.7-mile (increased from a 7-mile) radius of Eveleth-Virginia Municipal Airport, Eveleth, MN; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Eveleth NDB.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MN E5 Eveleth, MN [Amended]

Eveleth-Virginia Municipal Airport, MN (Lat. 47°25'27" N, long. 92°29'48" W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Eveleth-Virginia Municipal Airport.

Issued in Fort Worth, Texas, on May 24, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–11226 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0385; Airspace Docket No. 21–AGL–21]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace and Revocation of Class E Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D airspace and Class E airspace at Columbus, OH, and revoke the Class E airspace extending upward from 700 feet above the surface at Dan Darby Airport, Columbus, OH. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Rickenbacker International Airport runway 5R middle marker and the cancellation of instrument procedures at Dan Darby Airport. The name and geographic coordinates of various airports would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 12, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0385/Airspace Docket No. 21–AGL–21 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA

Order 7400.11E at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace at Ohio State University Airport, Columbus, OH, and Rickenbacker International Airport, Columbus, OH, and the Class E airspace extending upward from 700 feet above the surface at John Glenn Columbus International Airport, Columbus, OH, and Rickenbacker International Airport, and revoke the Class E airspace extending upward from 700 feet above the surface at Dan Darby Airport, Columbus, OH, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2021-0385/Airspace

Docket No. 21-AGL-21." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace at Ohio State University Airport, Columbus Ohio by removing the name of the airport from the header of the airspace legal description to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order 7400.2M; updating the geographic coordinates of the airport to

coincide with the FAA's aeronautical database; and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Amending the Class D airspace to within a 4.6-mile (increased from a 4.5-mile) radius of Rickenbacker International Airport, Columbus, OH; removing the airport name from the header of the airspace legal description to comply with changes to FAA Order 7400.2M; and removing the city associated with the airport to comply with changes to FAA Order 7400.2M;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 7.5-mile (increased from a 7-mile) radius of John Glenn Columbus International Airport, Columbus, OH; updating the name of John Glenn Columbus International Airport (previously Port Columbus International Airport) to coincide with the FAA's aeronautical database; removing the cities associated with the airports to comply with changes to FAA Order 7400.2M; within a 7.1-mile (increased from a 7-mile) radius of Rickenbacker International Airport; within 4 miles each side of the 045° bearing from Rickenbacker International Airport extending from the 7.1-mile (previously 7-mile) radius to 12.6 miles (increased from 12.5 miles) northeast of the Rickenbacker International Airport; updating the geographic coordinates of Ohio State University Airport to coincide with the FAA's aeronautical database; removing Dan Darby Airport, Columbus, OH, and the associated airspace as the instrument procedures at this airport have been cancelled and the airspace is no longer required; and removing the exclusionary language from the airspace legal description as it is not required.

This action is necessary due to airspace reviews caused by the decommissioning of the Rickenbacker International Airport runway 5R middle maker and the cancellation of the instrument procedures at Dan Darby Airport, Columbus, OH.

Class D and E airspace designations are published in paragraph 5000 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Columbus, OH [Amended]

Ohio State University Airport, OH
(Lat. 40°04′46″ N, long. 83°04′24″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Ohio State University Airport, excluding that airspace within the Columbus, Port Columbus International Airport, OH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

AGL OH D Columbus, OH [Amended]

Rickenbacker International Airport, OH
(Lat. 39°48′50″ N, long. 82°55′40″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.6-mile radius of Rickenbacker International Airport, excluding that airspace within the Columbus, Port Columbus International Airport, OH, Class C airspace area.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL OH E5 Columbus, OH [Amended]

John Glenn Columbus International Airport, OH

(Lat. 39°59′49″ N, long. 82°53′32″ W)

Rickenbacker International Airport, OH

(Lat. 39°48′50″ N, long. 82°55′40″ W)

Ohio State University Airport, OH

(Lat. 40°04′46″ N, long. 83°04′24″ W)

Bolton Field Airport, OH

(Lat. 39°54′04″ N, long. 83°08′13″ W)

Fairfield County Airport, OH

(Lat. 39°45′20″ N, long. 82°39′26″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of John Glenn Columbus International Airport, and within 3.3 miles either side of the 094° bearing from John Glenn Columbus International Airport extending from the 7.5-mile radius to 12.1 miles east of the airport, and within a 7.1-mile radius of Rickenbacker International Airport, and within 4 miles either side of the 045° bearing from Rickenbacker International Airport extending from the 7.1-mile radius to 12.6 miles northeast of the airport, and within a 6.5-mile radius of Ohio State University Airport, and within a 7.4-mile radius of Bolton Field Airport, and within a 7-mile radius of Fairfield County Airport.

Issued in Fort Worth, Texas, on May 24, 2021.

Martin A. Skinner,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2021–11230 Filed 5–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0137]

RIN 1625–AA08

Special Local Regulation; North Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; re-opening of public comment period.

SUMMARY: On March 18, 2021, the Coast Guard published a notice of proposed rulemaking to establish temporary special local regulations on May 2, 2021, to provide for the safety of life on certain navigable waters of the North Atlantic Ocean during the Ocean City Offshore Grand Prix. The Coast Guard is publishing this revised notice of proposed rulemaking because the event sponsor has postponed the event until October 24, 2021. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 28, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0137 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Shaun Landante, U.S. Coast Guard Sector Maryland—National Capital Region; telephone 410–576–2570, email D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard published an NPRM on March 18, 2021 (86 FR 14716), proposing to establish a special local

regulation for the Ocean City Offshore Grand Prix on the North Atlantic Ocean, on May 2, 2021. After publication of that notice, the Coast Guard was informed by the sponsor that the event was being postponed until October 24, 2021. This is the only change from the original proposal published on March 18. We are issuing this supplemental proposal to amend the special local regulation due to account for the change in the event date, and re-open the comment period to account for this change.

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 proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Maryland—National Capital Region proposes to establish special local regulations from 10 a.m. through 6 p.m. on October 24, 2021. There is no alternate date planned for this event. The regulated area would cover all navigable waters of the North Atlantic Ocean, within an area bounded by the following coordinates: Commencing at a point near the shoreline at latitude 38°21'42" N, longitude 075°04'11" W, thence east to latitude 38°21'33" N, longitude 075°03'10" W, thence southwest to latitude 38°19'25" N, longitude 075°04'02" W, thence west to the shoreline at latitude 38°19'35" N, longitude 075°05'02" W, at Ocean City, MD. The regulated area is approximately 4,500 yards in length and 1,600 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include "Race area," "Buffer area", and "Spectator area."

The proposed 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, scheduled from 12 p.m. to 5 p.m. on October 24, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue

them a citation for failure to comply, or both.

Except for Ocean City Grand Prix 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 can 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 person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland—National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct spectator vessels while within the regulated area. Only participant vessels and official patrol vessels would be allowed to enter the race area.

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 location of the regulated area. Vessel traffic would be able to safely transit around this regulated area, which would impact a small designated area of the North

Atlantic Ocean for 8 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so.

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 safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for eight 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. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. 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. If you go to the online docket and sign up for email alerts, you will be notified

when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501T05–0137 to read as follows:

§ 100.501T05–0137 Special Local Regulation; North Atlantic Ocean, Ocean City, MD.

(a) *Locations.* All coordinates reference Datum NAD 1983. (1) *Regulated area.* All navigable waters of the North Atlantic Ocean, within an area bounded by the following coordinates: Commencing at a point near the shoreline at position latitude 38°21'42" N, longitude 075°04'11" W; thence east to latitude 38°21'33" N, longitude 075°03'10" W; thence southwest to latitude 38°19'25" N, longitude 075°04'02" W; thence west to the shoreline at latitude 38°19'35" N, longitude 075°05'02" W, at Ocean City, MD. The race area, buffer area, and spectator area are within the regulated area.

(2) *Race area.* The race area is a polygon in shape measuring approximately 3,500 yards in length by 350 yards in width. The area is bounded by a line commencing at position latitude 38°19'46.85" N, longitude 075°04'43.28" W, thence east to latitude 38°19'44.23" N, longitude 075°04'29.89" W, thence north and parallel to Ocean City, MD shoreline to latitude 38°21'23.24" N, longitude 075°03'48.87" W, thence west to latitude 38°21'25.12" N, longitude 075°04'02.45" W; thence south to the point of origin.

(3) *Buffer area.* The buffer zone is a polygon in shape measuring approximately 500 yards in all directions surrounding the entire race area described in the preceding paragraph of this section. The area is bounded by a line commencing at a point near the shoreline at position latitude 38°21'42" N, longitude 075°04'11" W; thence east to latitude 38°21'35" N, longitude 075°03'24" W; thence southwest to latitude 38°19'28" N, longitude 075°04'17" W; thence west to the shoreline at latitude 38°19'35" N,

longitude 075°05'02" W, at Ocean City, MD.

(4) *Spectator area.* The designated spectator area is a polygon in shape measuring approximately 3,500 yards in length by 350 yards in width. The area is bounded by a line commencing at position latitude 38°19'40" N, longitude 075°04'12" W, thence east to latitude 38°19'37" N, longitude 075°03'59" W, thence northeast to latitude 38°21'17" N, longitude 075°03'17" W, thence west to latitude 38°21'20" N, longitude 075°03'31" W, thence southwest to point of origin.

(b) Definitions. As used in this section:

Buffer area is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland—National Capital Region means the Commander, U.S. Coast Guard Sector Maryland—National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland—National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland—National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Ocean City Grand Prix or otherwise designated by the event sponsor as having a function tied to the event.

Race area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

(c) *Special local regulations:* (1) The COTP Maryland—National Capital Region or Event PATCOM may forbid and control the movement of all vessels

and persons, including event participants, in the regulated area. 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.

(4) Only participant vessels and official patrol vessels are allowed to enter the race area.

(5) 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 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 PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(6) 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 date 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 10 a.m. to 6 p.m. on October 24, 2021.

Dated: May 14, 2021.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland—National Capital Region.

[FR Doc. 2021-10628 Filed 5-27-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0216]

RIN 1625-AA08

Special Local Regulation; Lake of the Ozarks, Mile 34.5, Sunrise Beach, MO

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for all navigable waters of Sunrise Beach in Francis Hollow at mile marker 34.5 on the Lake of the Ozarks, Missouri. This action is necessary to provide for the safety of life on these navigable waters during a waterside concert on June 26, 2021. This proposed rulemaking would establish a temporary special local regulation for spectator vessels and prohibit other vessels from transiting the regulated area during the concert. Transiting through the regulated area would be prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River 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 June 28, 2021.

ADDRESSES: You may submit comments identified by docket number USCG-2021-0216 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Stephanie Moore, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2560, email Stephanie.R.Moore@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On April 4, 2021, Benne Media notified the Coast Guard that it will be holding a free waterside concert from 11 a.m. through 6 p.m. on June 26, 2021. The concert will be held on the Lake of the Ozarks in Francis Hollow, Missouri, which contains residential homes with boat docks. The residents in this hollow may need to transit this area during the concert. The size of the specially regulated area would not prevent egress to or from any residence in Francis Hollow. Hazards from the event include vessels needing to transit the area during the concert which is expected to have a dense vessel spectator area. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the event would be a safety concern for concert vessel spectators and vessels needing to transit the area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233).

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation from 11 a.m. through 6 p.m. on June 26, 2021. The special local regulation would cover a portion of navigable waters on the west side of Francis Hollow at MM 34.5 on Lake of the Ozarks. The duration of the regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11 a.m. through 6 p.m. event. All non-participants would be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

A designated representative may be a Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM." An Official Patrol Vessel would mean 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 Upper Mississippi River, (COTP) in the enforcement of the regulations in this section. A Participant would mean all persons and vessels attending the event. All persons and vessels not registered with the sponsor as participants or official patrol vessels would be considered spectators.

If a spectator vessel is required to transit through the regulated area it would be able to do so only with prior approval of the Patrol Commander and when so directed by that officer and would be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft. No spectator would be permitted to anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

The Patrol Commander might forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel would have to come to an immediate stop and comply with the directions given. Failure to do so might result in expulsion from the area, citation for failure to comply, or both. Any spectator vessel might anchor outside the regulated area specified in subsection (a) above, but may not anchor in, block, or loiter in a navigable channel.

The Patrol Commander might terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The Patrol Commander might terminate enforcement of the special regulations at the conclusion of the event.

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, location, and duration of the proposed rule. The proposed special local regulation would cover 1 mile of the navigable waters of the Lake of Ozarks for seven hours on one day. Vessel traffic would be able to request permission from the COTP or a designated representative to enter or transit the regulated area. Moreover, the Coast Guard would issue Local Notices to Mariners, Safety Marine Information Broadcasts, and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on

the human environment. This proposed rule involves the establishment of a temporary special local regulation from 11 a.m. through 6 p.m. on June 26, 2021. The special local regulation would be effective for Francis Hollow on Lake of the Ozarks, MO. 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. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that

website's instructions. 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. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T08–0216 to read as follows:

§ 100.T08–2016 Special Local Regulation; Francis Hollow, Mile Marker 34.5, The Lake of the Ozarks, MO.

(a) *Location.* The following area is a special local regulation: All navigable waters of the Lake of Ozarks from the western bank to the midpoint Francis Hollow at Mile Marker (MM) 34.5.

(b) *Definitions.* An Official Patrol Vessel 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 Upper Mississippi River, (COTP) in the enforcement of the regulations in this section. A Participant means all persons and vessels attending the event.

(c) *Regulations.* (1) All non-participants would be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

designated Designated Representative may be a Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM.”

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators.

(3) Should a spectator vessel be required to transit through the regulated

area it may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area specified in subsection (a) above, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

(d) *Enforcement Period.* This section will be enforced from 11 a.m. through 6 p.m. on June 26, 2021.

Dated: May 14, 2021.

R.M. Scott,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2021-11281 Filed 5-27-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0245]

RIN 1625-AA08

Type of Regulation; Ohio River, Tell City, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 719 to MM 722. This action is necessary to

provide for the safety of persons, vessels, and the marine environment during the paddle event known as PADL 2021. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Ohio Valley 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 June 28, 2021.

ADDRESSES: You may submit comments identified by docket number USCG-2021-0245 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Christopher Roble, Sector Ohio Valley, U.S. Coast Guard; telephone (502)-779-5336, email SECOHV-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On March 25, 2021, the Paddle Perry notified the Coast Guard that it will be conducting a paddle excursion with 100 participants from 10:30 a.m. to 1:30 p.m. on July 31, 2021. The Coast Guard proposes to establish a temporary special local regulation for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 719.0 to MM 722.0. The Captain of the Port Sector Ohio Valley has determined that a special local regulation is necessary to protect the participants from potential hazards associated with vessel traffic. The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters of the Ohio River before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary special local regulation for all navigable waters of the Ohio River from MM 719.0 to MM 722.0 from 10:30 a.m. to 1:30 p.m. on July 31, 2021. The regulated area would cover all navigable waters of the Ohio River, extending the entire width of the river, between MM 719.0 to MM 722.0. The duration of the special local regulation is intended to ensure the safety of persons, vessels, and the marine environment on these navigable waters before, during, and after the PADL 2021 excursion. All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley or their designated representative. To seek permission to enter, contact the COTP or the COTP's representative by Sector Ohio Valley Command Center at 502-779-5422. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

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, location, duration, and time-of-day of the temporary special local regulation. This proposed special local regulation restricts transit on a three-mile stretch of the Ohio River for three hours on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners, Local Notices to Mariners, and Marine Safety Information Bulletins about this special local regulation so that waterway users may plan accordingly for this short restriction on transit, and the rule would allow vessels to request permission to enter 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 temporary special local regulation may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed

this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this 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 a special local regulation that would prohibit entry on a 3-mile stretch of the Ohio River on one day. 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.

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.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. 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. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERWAYS.

■ 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.T08–0245 to read as follows:

§ 100.T08–0245 PADL 2021, Ohio River, Tell City, IN.

(a) Regulated area.

The regulations in this section apply to the following area: The regulated area would cover all navigable waters of the Ohio River, extending the entire width of the river, between MM 719.0 to MM 722.0.

(b) Definitions.

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 Sector Ohio Valley (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

(c) Regulations. (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM Channel 16 or by telephone at 1–800–253–7465. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) Enforcement period. This section will be enforced from 10:30 a.m. to 1:30 p.m. on July 31, 2021.

Dated: May 11, 2021.

A.M. Beach,

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

[FR Doc. 2021–10886 Filed 5–27–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–R08–OAR–2021–0267; FRL–10024–00–Region 8]

Clean Air Act New Source Review Operating Permit Program; Notice of Transfer of Permits to Wyoming Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to grant Wyoming Department of Environmental Quality's (WDEQ) August 21, 2020 request to transfer to the State administrative authority over two federal permits that were issued by the EPA on June 26, 1973 under the federal new source review (NSR) permitting program. In addition, the EPA is proposing to agree with WDEQ's analysis in its August 21, 2020 letter demonstrating that the current Wyoming regulations still meet the requirements of the federal NSR permitting program. This action is proposing to transfer the 1973 federally issued permits to Wyoming. The EPA is proposing this action in accordance with the Clean Air Act and the Code of Federal Regulations NSR program requirements.

DATES: Written comments must be received on or before June 28, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2021–0267, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.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://www.epa.gov/dockets/submitting-comments>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov.

To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT:

Donald Law, Air and Radiation Division (8ARD–PM), EPA, Region 8, Mailcode 8ARD–PM, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7015, law.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

Proposed action: In the “Rules and Regulations” section of this **Federal Register**, the EPA is publishing a direct final rule without prior proposal of the EPA's intent to grant WDEQ's August 21, 2020 request to transfer to the State administrative authority over two existing EPA issued permits that were issued by the EPA on June 26, 1973 under the now superseded federal NSR permitting program for Wyoming. The EPA views this as a noncontroversial action and we do not expect adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA contemplates no further action. If the EPA receives adverse comments, the EPA will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For additional information, see the direct final rule of the same title which is located in the “Rules and Regulations” section of this **Federal Register**.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Opacity, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 20, 2021.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2021–11191 Filed 5–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R04–OAR–2020–0461; FRL–10024–40–Region 4]

Air Plan and Operating Permit Program Approval; Kentucky; Public, Affected State, and EPA Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Kentucky State Implementation Plan (SIP) and the Kentucky Title V Operating Permit Program (Title V) submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet) on August 12, 2020, and March 29, 2021. These revisions address the public notice rule provisions for the New Source Review (NSR), Federally Enforceable State Operating Permits (FESOP) and Title V programs of the Clean Air Act (CAA or Act) by providing for electronic notice (“e-notice”) and removing the mandatory requirement to provide public notice of a draft air permit in a newspaper. EPA is proposing to approve these changes as they are consistent with the Clean Air Act (CAA or Act) and implementing federal regulations.

DATES: Comments must be received on or before June 28, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0461 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points

you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized revised public notice provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA. See 81 FR 71613 (October 18, 2016). These rule revisions removed the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and Title V rules, such as Kentucky’s EPA-approved permitting programs. Permitting authorities are not required to adopt e-notice. Nothing in the revised rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use “a consistent noticing method” for all permit notices under the specific permitting program. When e-notice is provided, EPA’s rule requires electronic access (e-access) to the draft permit for the duration of the public comment period.

EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. EPA further anticipates that e-access will expand

access to permit-related documents. A full description of the e-notice and e-access provisions are contained in EPA’s October 18, 2016 rulemaking notice. See 81 FR 71613.

EPA is proposing to approve changes to 401 Kentucky Administrative Regulations (KAR) 52:100, *Public, affected state, and U.S. EPA review*, of the Kentucky SIP and Title V program, submitted by the Commonwealth on August 12, 2020, and March 29, 2021. The August 12, 2020, and March 29, 2021, SIP and Title V program revisions seek to establish a revised method of publication of public notices for public hearings and public comment periods, establish a revised method of notification of the opportunity to be placed on a mailing list of permit actions, change how documents related to permit proceedings will be available for public inspection, and make minor changes to 401 KAR 52:100 that do not alter the meaning of the regulation. The SIP revision updates the current SIP-approved version of 401 KAR 52:100 (Version 1) to Version 2. The Title V revision updates the approved version of 401 KAR 52:100 originally approved in the Kentucky Title V program in the same manner.¹

II. EPA’s Analysis of Kentucky’s Submittals

The SIP and Title V program revisions contain changes to 401 KAR 52:100, *Public, affected state, and U.S. EPA review*, which establishes the procedures used by the Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and EPA. Specifically, 401 KAR 52:100 applies to permit actions established in 401 KAR 52.020, *Title V Permits* and 401 KAR 52.030, *Federally-enforceable permits for non-major sources*.² In addition, the public

¹ EPA fully approved Kentucky’s title V permitting program in 2001. See 66 FR 54955 (October 31, 2001).

² 401 KAR 52:030 establishes requirements for sources that accept emission limitations to avoid major source NSR requirements under Title I of the Act or Operating Permit Program requirements under Title V of the Act. Sources subject to these types of permits restricting potential to emit (PTE), both for construction permitting of new or modified sources and operating permitting for existing major sources, are commonly referred to as synthetic minor sources. Kentucky prefers to distinguish between the Title V and Title I requirements that a source is attempting to avoid. Hence, they use the term “conditional major” for sources whose emissions are limited below the threshold for Title V, and “synthetic minor” for sources whose emissions are below the threshold for Title I. See “Cabinet Provisions and Procedures for Issuing Federally-Enforceable Permits for Nonmajor Sources,” which is incorporated by reference in Section 26 of 401 KAR 52:030. SIP-approved operating permit programs that restrict PTE

participation provisions of Kentucky's major source NSR permitting programs at 401 KAR 51:017, *Prevention of significant deterioration of air quality* (PSD), and 401 KAR 52:052, *Review of new sources in or impacting upon nonattainment areas* (addressing nonattainment new source review (NNSR)) cross reference 52 KAR 52:100. Specifically, Kentucky's PSD rules at 401 KAR 51:017, Section 5, *Exclusions from Increment Consumption*; Section 10, *Air Quality Models*; Section 14, *Sources Impacting Class I Areas*; Section 15, *Public Participation*; and Section 20, *Plant-wide Applicability Limit Provisions*, cite to 401 KAR 52:100 and to 40 CFR 51.166(q). Kentucky's NNSR rules at 401 KAR 51:052, Section 7(5)(f), *Source Obligation*; Section 10(3), *Federal land manager notification*; Section 10(4), *Public participation*; and Section 11, *Plant-wide Applicability Limit Provisions*, cite to 401 KAR 52:100 and to 40 CFR 52.21(4) (to the extent that 401 KAR 52:100 procedures do not apply).

In this proposed action, EPA is proposing to approve the following changes to 401 KAR 52:100. In Section 2, "Public Comment Period," Section 3, "Public Hearing," and Section 4, "Public Notice," the Cabinet is replacing the public notice method for the aforementioned permit programs from newspaper publication to website notification at <http://eec.ky.gov>. This method of notification is consistent with the public availability of information requirements for permits under 40 CFR 51.161, 51.166(q), 51.165(i), and 70.7 and the criteria for FESOP programs (see 54 FR 27274 (June 28, 1989)) (hereinafter FESOP Guidance). Additionally, this regulation allows the Cabinet to provide further notice in newspapers, newsletters, and press releases under Section 4(2).

Section 7, "Mailing List," is updated to require the Cabinet to notify persons of the opportunity to be on a mailing list to receive notification of permit actions via the Cabinet's website, rather than notification through hard copy publications.

Section 8, "Public Inspection of Documents," is also updated to require the Cabinet to post draft permits on the Cabinet's website for the duration of the public comment period. The revision to

primarily to avoid major source operating permitting under title V are commonly referred to as FESOP programs. The FESOP program is a voluntary mechanism for states to create federally enforceable restrictions on PTE to avoid major source permitting requirements, such as the title V operating permit program, and there are no specific CAA provisions or federal regulations regarding the issuance of synthetic minor or conditional major operating permits.

Section 8 deletes the requirement that the permit application, draft permit, and supporting material information be available for public inspection in local public libraries and county clerk offices, but retains the requirement that, during the public comment period, all non-confidential information contained in the permit application, draft permit, and supporting materials be made available at the main office of the Division of Air Quality and the Division for Air Quality Regional office having jurisdiction over the source. As described above, posting draft permits on a designated website is required for consistency under the federal rules when e-notice is provided.

In addition, the submission contains minor textual changes to provide clarity and greater consistency. These textual revisions include: updating references to the Cabinet, Division for Air Quality, and regional offices; language changes for clarity and consistency such as changing "specified" to "established" and adding "public" before references to notice and hearings; clarifying that confidential information refers to confidential business information (CBI) under 40 CFR part 2 and 400 KAR 1:060 in Section 5(11)(b); and clarifying that the Cabinet will issue a revised permit upon receipt of EPA objection under Section 10(9)(c)(2). It does not change substantive elements of the content of such notifications or time periods associated with notifications. EPA is proposing to approve these revisions because the revisions are consistent with the SIP revision requirements of CAA section 110, the Title V program revision requirements of 40 CFR 70.4, and EPA's permitting requirements for public participation.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 401 KAR 52:100, *Public, affected state, and U.S. EPA review*, Version 2, state effective June 2, 2020, into the Kentucky SIP, as well as the State's federally approve title V program. The proposed incorporation includes minor textual changes and establishes a revised means of publication for public notices for public hearing, public comment periods, and the opportunity to join mailing lists, and a revised means to inspect documents related to permit proceedings. 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 changes to 401 KAR 52:100, *Public, affected state, and U.S. EPA review*, of the Kentucky SIP and Title V program, as submitted on August 12, 2020, and March 29, 2021, for the reasons stated above.

V. Statutory and Executive Order Reviews

In reviewing SIP and Title V submissions, EPA's role is to approve such submissions, provided that they meet the criteria under the CAA, and EPA's implementing regulations. 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 1955 (Pub. L. 104-4);
- Does not have Federalism implications as specified in the 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 any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the SIP-related rules do 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.

Furthermore, the proposed rules regarding Title V Operating Permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these proposed rules impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

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

Dated: May 20, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021-11149 Filed 5-27-21; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 433, 438, 447, and 456

[CMS-2482-P2]

RIN 0938-AT82

Medicaid Program; Establishing Minimum Standards in Medicaid State Drug Utilization Review (DUR) and Supporting Value-Based Purchasing (VBP) for Drugs Covered in Medicaid, Revising Medicaid Drug Rebate and Third Party Liability (TPL) Requirements; Delay of Effective Date for Provision Relating to Manufacturer Reporting of Multiple Best Prices Connected to a Value Based Purchasing Arrangement; Delay of Inclusion of Territories in Definition of States and United States

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule proposes to delay for 6 months the January 1, 2022 effective date for amendatory instruction 10.a., which addresses the reporting by manufacturers of multiple best prices connected to a value based purchasing arrangement, of the final rule entitled, “Medicaid Program; Establishing Minimum Standards in Medicaid State Drug Utilization Review (DUR) and Supporting Value-Based Purchasing (VBP) for Drugs Covered in Medicaid, Revising Medicaid Drug Rebate and Third Party Liability (TPL) Requirements”, published in the December 31, 2020 **Federal Register**. This proposed rule also proposes to delay for 2 years the April 1, 2022 effective date of inclusion (inclusion date) for U.S. territories (American Samoa, Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands) in the amended regulatory definitions of “States” and “United States” for purposes of the Medicaid Drug Rebate Program (MDRP), adopted in the interim final rule with comment period entitled, “Medicaid Program; Covered Outpatient Drug; Further Delay of Inclusion of Territories in Definitions of States and United States”, published in the November 25, 2019 **Federal Register** to April 1, 2024. In the alternative, we are proposing to finalize an inclusion date that may be earlier than April 1, 2024, but not before January 1, 2023, based on public comments received. We are requesting

public comment on the proposed delays of applicable effective date and inclusion date discussed in greater detail below.

DATES: To be assured consideration, comments on the proposals must be received at one of the addresses provided below by June 28, 2021.

ADDRESSES: In commenting, please refer to file code CMS-2482-P2.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2482-P2, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2482-P2, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Christine Hinds, (410) 786-4578; Wendy Tuttle, (410) 786-8690.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the applicable comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the applicable comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. Proposed Delays in Effective and Inclusion Dates of Certain Regulation Provisions

CMS is proposing to delay the January 1, 2022 effective date for amendatory instruction 10.a. of the final rule entitled, “Medicaid Program; Establishing Minimum Standards in Medicaid State Drug Utilization Review (DUR) and Supporting Value-Based Purchasing (VBP) for Drugs Covered in Medicaid, Revising Medicaid Drug Rebate and Third Party Liability (TPL) Requirements” (85 FR 87000), for 6 months to July 1, 2022, and to delay the April 1, 2022, inclusion date in the amended regulatory definitions of “States” and “United States”, adopted in the interim final rule with comment period entitled “Medicaid Program; Covered Outpatient Drugs; Further Delay of Inclusion of Territories in Definitions of States and United States” (84 FR 64783), for 2 years until April 1, 2024, or in the alternative, to a date earlier than April 1, 2024, but not before January 1, 2023.

B. Proposed Delay of Effective Date of Amendatory Instruction 10.a.

On December 31, 2020, we published a final rule in the **Federal Register** entitled “Medicaid Program; Establishing Minimum Standards in Medicaid State Drug Utilization Review (DUR) and Supporting Value-Based Purchasing (VBP) for Drugs Covered in Medicaid, Revising Medicaid Drug Rebate and Third Party Liability (TPL) Requirements”¹ (85 FR 87000) (hereinafter referred to as the December 31, 2020 final rule). The December 31, 2020 final rule advanced CMS’ efforts to support state flexibility to enter into innovative value-based purchasing (VBP) arrangements with drug manufacturers for new and innovative, and often costly therapies, such as gene therapies, and codified new approaches required by section 1004 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (SUPPORT Act) (Pub. L. 115–271, enacted October 24, 2018) and the existing Medicaid DUR program to improve the clinical use of opioids and reduce the potential for abuse in Medicaid patients. In addition, it codified in regulation several changes made in recent legislation and clarified other provisions of regulations relating

to the Medicaid Drug Rebate Program (MDRP).

The regulations included in the December 31, 2020 final rule went into effect on March 1, 2021, except for certain amendatory instructions, including instruction 10.a., which is effective on January 1, 2022. We are proposing to delay the January 1, 2022 effective date for amendatory instruction 10.a. of the December 31, 2020 final rule on manufacturer reporting of multiple best prices connected to a VBP arrangement, to July 1, 2022, and are seeking public comment on the proposed delay as outlined in section I.A. of this proposed rule. As discussed in greater detail in section II. of this proposed rule, we believe a delay of 6 months is warranted to assure that stakeholders have the ability to implement the new VBP policy in a manner that assures that patient access and quality of care is protected. We seek public comments on this proposed delay in the effective date, including the impact of this delay on affected beneficiaries. The primary reason for the original delay, and the new proposed delay, is to provide more time for CMS, states, and manufacturers to make the complex system changes necessary to implement the new best price and VBP program, and assure patient access and quality of care, given the current need to devote resources to the public health emergency (PHE) relating to COVID–19 that has been in effect, and will likely remain in effect through 2021.

C. Proposed Delay of Inclusion Date in Amended Regulatory Definitions of “States” and “United States”

The Covered Outpatient Drug (COD) final rule, published in the February 1, 2016 **Federal Register** (81 FR 5170), amended the regulatory definitions of “States” and “United States” to include the U.S. territories (American Samoa, Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands) for the purposes of the MDRP with a delayed inclusion date of April 1, 2017. We stated in the preamble to the final rule that U.S. territories may use existing waiver authority to elect not to participate in the MDRP consistent with the statutory waiver standards. Specifically, the Northern Mariana Islands and American Samoa may seek to opt out of participation under the broad waiver that has been granted to them in accordance with section 1902(j) of the Act. The territories of Puerto Rico, the Virgin Islands, and Guam may use waiver authority under section 1115 of the Act to waive section 1902(a)(54) of the Act, which requires state

compliance with the applicable requirements of section 1927 of the Act (81 FR 5203 through 5204).

The change to the definition of “States” and “United States” under the COD final rule to include the territories would also impact the quarterly calculation of average manufacturer price (AMP) and best price by manufacturers. That is, the change requires manufacturers to include prices paid by entities in the U.S. territories in the same manner in which they include prices paid by entities located in one of the 50 states and District of Columbia (81 FR 5224) in AMP and best price. It requires manufacturers to include eligible sales and associated discounts, rebates, and other financial transactions that take place in the U.S. territories in their calculations of AMP and best price once the revised definitions of “States” and “United States” take effect, regardless of whether the U.S. territories seek to waive participation in the MDRP.

Once the COD final rule became effective, CMS began discussions with the territories regarding their participation in the MDRP. Based on those discussions, it became evident that interested territories would not be ready to participate in the MDRP by April 1, 2017. Stakeholders also reiterated the concerns in the comments to the COD final rule (81 FR 5224) that drug manufacturers will likely need to increase drug prices paid by U.S. territory Medicaid programs once the territories are included in the definitions of “States” and “United States” in order to avoid setting a new, lower best price. That is because if prices for drugs in the territories are lower than those in the states, then those prices could become the Medicaid best price for that drug in the entire Medicaid program. The manufacturers may then increase their drug prices in the territories to avoid this outcome, and an increase in drug prices in the territories could result in an increase in territory Medicaid drug spending without the offsetting benefit of receiving Medicaid rebates. Furthermore, the increase in Medicaid drug spending could adversely impact the availability of drugs to patients in the territories because of their Medicaid funding cap.

As a result of these initial and subsequent discussions on preparedness, the potential for increased Medicaid drug prices in certain territories, and later, due to additional impacts of natural disasters in several of the territories, CMS issued two interim final rules with comment period (IFC) to further delay the

¹ <https://www.federalregister.gov/documents/2020/12/31/2020-28567/medicaid-program-establishing-minimum-standards-in-medicicaid-state-drug-utilization-review-dur-and>.

inclusion date for the U.S. territories in the regulatory definitions of “States” and “United States” for purposes of the MDRP. The first, the “Medicaid Program; Covered Outpatient Drug; Delay in Change in Definitions of States and United States” IFC, was issued on November 15, 2016, amending the regulatory definitions of “States” and “United States” to include the U.S. territories beginning April 1, 2020, rather than to April 1, 2017 (81 FR 80003). The second, the “Medicaid Program; Covered Outpatient Drug; Further Delay of Inclusion of Territories in Definitions of States and United States” IFC, was published on November 25, 2019, and further delayed the inclusion date for the regulatory definitions of “States” and “United States” to include the U.S. territories beginning April 1, 2022, rather than April 1, 2020 (84 FR 64783).

For similar reasons, in addition to ensuring continued beneficiary access and quality of care protections, we are proposing to amend § 447.502 to delay the April 1, 2022 inclusion date for the amended regulatory definitions of “States” and “United States” to April 1, 2024, and are seeking public comment on the proposed delay as outlined in section I.A. of this proposed rule. As discussed in greater detail in section II. of this proposed rule, we believe an additional delay of 2 years may be warranted because it would allow the territories to focus their human and financial resources on ensuring the health and well-being of their beneficiaries during this PHE, rather than having to divert those resources to the development of systems required to participate in the MDRP, which can take several years to implement from start to finish, and seek public comments on this proposal. However, if we determine based on public comments received from interested parties that the territories that want to participate in MDRP can do so sooner than April 1, 2024, and those that do not want to participate are able to complete the necessary waiver process, then we are proposing in the alternative to finalize a date that is sooner than April 1, 2024, but not earlier than January 1, 2023.

II. Proposed Delay in Effective and Inclusion Dates of Certain Regulation Provisions Due to Ongoing Public Health Emergency (PHE)

On April 21, 2021, the Secretary of Health and Human Services (the Secretary) renewed the PHE initially declared on January 31, 2020, to continue giving CMS programs (including Medicaid) flexibility to support beneficiaries during the

COVID-19 pandemic. This PHE is expected to last through 2021. In response to the PHE, CMS put in place its own pandemic plan (<https://www.cms.gov/files/document/covid-pandemic-plan.pdf>) to address the needs of its stakeholders, as well as the beneficiaries of its various programs including Medicaid. As part of that plan, CMS provided that it may approve waivers, amendments, and flexibilities for U.S. states, including the District of Columbia, and U.S. territories to allow Medicaid and CHIP programs to adapt their operations as necessary to respond to the pandemic. The pandemic plan also provided that it may make adjustments to the agency’s value-based payment initiatives to allow health providers, healthcare facilities, Medicare Advantage and Part D plans, and States to focus on providing needed care to beneficiaries. In addition to the flexibilities granted to states under the PHE, the President signed into law on March 11, 2021 the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2) to address the health care and economic needs of the country during the pandemic. This law is one of the most significant expansions of Medicaid since enactment of the Affordable Care Act of 2010, and includes several new mandatory benefit requirements on states that will take time to implement.

We acknowledged in the December 31, 2020 final rule that the changes to the reporting of multiple best prices by manufacturers under the MDRP (a VBP policy) adopted under the amendatory instruction 10.a would require additional time to provide operational guidance and complex system changes to implement. Thus, we delayed the effective date of the VBP provision until January 1, 2022. States that opt to participate in VBP models offered by manufacturers under the multiple best price approach must ensure that beneficiaries have appropriate access to care under such arrangements by developing systems and methods to track beneficiaries and their outcomes, retrieving and evaluating the patient-specific outcomes data, and securing the cooperation of providers and beneficiaries to enter into some of the more complex outcome-based arrangements offered by the manufacturers. Thus, there will be requirements on states to develop significant capabilities to build an infrastructure that will be able to implement VBP.

We also want to be sure that our own technology infrastructure will be ready to receive multiple VBP offers from manufacturers that will report them to CMS, and subsequently report them to

states. We are currently developing a new Medicaid Drug Program (MDP) system. This MDP system will replace CMS’ current legacy system with certain aspects of the system expected to be transitioned in the summer of 2021. However, because of other events that have transpired since the regulation was published in December 2020, we do not believe that certain aspects of the system necessary for states and manufacturers to operationalize the VBP multiple best price program will be transitioned at that time, making a January 1, 2022 infeasible. We believe that it is important to have a technically up-to-date system that is ready to support the data requirements necessary for states and manufacturers to operationalize the VBP multiple best price program. However, we may have a delay with operationalizing that part of the MDP system by July 2021, which may mean we will not have the necessary CMS components in place by later this year to implement the program by January 1, 2022, and believe July 1, 2022, is a realistic target date.

Furthermore, the demands on researching, producing, and distributing COVID-19 drug treatments and vaccines have likely diverted some manufacturer financial and human resources from developing and implementing system changes that would be required to enter multiple best price offers in the MDP system.

We understand that there is interest among patient and consumer groups, states, and manufacturers in the new multiple best price policy, and we are committed to implementing the VBP multiple best price policy in a manner that assures that Medicaid beneficiaries have access to medications and therapies that are appropriately administered and monitored. However, we are concerned that there are several challenges the states, providers, and manufacturers are facing during the PHE. These include, in addition to those resulting from the passage of the ARP, those relating to implementing expanded eligibility and mandatory benefit requirements under Medicaid (as described below). In sum, states, providers and manufacturers, as well as CMS, will need additional time to operationalize the multiple best prices policy under amendatory instruction 10.a.

Therefore, given the possible delay in the MDP system and the recent developments around the PHE and ARP, we believe more time is critical to permit CMS and our partners—states, providers, and manufacturers—to successfully implement the multiple best prices approach so that Medicaid

patients benefit from these programs to full extent possible. Specifically, CMS and all the parties involved with the multiple best prices policies will want to make sure Medicaid patients receive the drug therapies under the VBP approach that are prescribed for them in a timely manner; that the VBP program does not create unnecessary barriers or requirements on the patient to access the drug; that they receive appropriately scheduled doses of a therapy if the patient treatment under the VBP arrangement is based on multiple doses; and that patient outcomes are tracked so that optimal patient care is provided; and, the states can obtain any additional discounts due to them from manufacturers under the VBP arrangement. At this time, we believe it is in the best interest of the Medicaid program and Medicaid beneficiaries, in particular, that states prioritize the Medicaid eligibility and benefit requirements under the ARP (for example, expanded optional Medicaid coverage for postpartum women, expansion of COVID-19 testing and treatment services, and expansion of vaccine administration to limited benefit groups), resulting from enactment of the ARP to address beneficiary needs during the COVID-19 pandemic, and therefore, propose a delay to the effective date for amendatory instruction 10.a. (the multiple best price approach) by 6 months (effective July 1, 2022). By allowing more time to address the needs of Medicaid beneficiaries during the PHE, states, CMS, providers, and manufacturers will also have more time to put in place appropriate beneficiary protections as part of the multiple best price approach.

Therefore, we propose to delay the amendment associated with multiple best price requirements for 6 months, which if finalized, would make amendatory instruction 10.a effective beginning July 1, 2022. We also expect to issue additional guidance before that time on operational and policy aspects of the new VBP program, including specifications relating to beneficiary protections.

For the same reasons discussed above, we believe that in light of the pandemic and the resource demands stemming from the PHE (including those established under the ARP) on the Medicaid program and its beneficiaries, it is imperative that the territories prioritize the Medicaid eligibility and mandatory benefit requirements brought about by the ARP to address beneficiary needs during the COVID-19. Therefore, we believe that a further delay in the inclusion date of the U.S. territories in

the regulatory definitions of “States” and “United States” is warranted and are proposing that they be included in those definitions beginning April 1, 2024. In the alternative, we are proposing to finalize an inclusion date that may be earlier than April 1, 2024, but not before January 1, 2023, based on public comments received.

By delaying the inclusion date to April 1, 2024, or in the alternative, a date earlier than April 1, 2024, but not before January 1, 2023, we are allowing the territories additional time to develop needed systems and policy changes, in order to avoid unintended increases in drug costs and access concerns. The needed systems must be capable of collecting, reporting, validating, and tracking drug utilization on an ongoing basis. In addition, they require extensive advance planning and budgeting.

The delay in inclusion date would also benefit those territories that choose not to participate in the MDRP, and therefore, would be required to use human and financial resources to complete the section 1115 and section 1902(j) waiver applications that are required to waive out of MDRP participation should the current April 1, 2022 date remain in effect.

Moreover, should the amended regulatory definitions of “States” and “United States” go into effect on April 1, 2022, all manufacturers’ sales to the territories and prices paid would be included in the AMP and best price calculations at that time, regardless of whether the territory is participating in the MDRP. As discussed in the COD final rule (81 FR 5224), we heard from various stakeholders who expressed concerns that drug manufacturers would likely be prompted to increase drug prices, including prices paid by the U.S. territory Medicaid programs, once the territories are included in the definitions of “States” and “United States.” This is because, as currently drafted, section 1927 of the Act requires that eligible sales of drugs within the United States be included in the drug manufacturers calculation of Average Manufacturer Price (AMP) and best price. The inclusion of these prices in AMP and best price would result in the territories that receive a waiver realizing an increase in their Medicaid drug costs without the offsetting benefit of receiving Medicaid rebates.

Furthermore, the increase in Medicaid costs could adversely affect territories because of their Medicaid funding cap. As noted above, that could result in an increase in drug prices in the territories, making drugs less affordable, and making it more difficult for the territories to address their own public

health needs during the PHE. We believe this provides further rationale for delaying the inclusion date of territories in the regulatory definitions of “States” and “United States.” It will ensure that during this PHE, which has the potential to extend into 2022, those territories that opt to waive participation from the MDRP will not face the additional financial burdens associated with increased Medicaid drug costs from drug manufacturers increasing drug prices to the territories.

We are proposing a new inclusion date of April 1, 2024 for the amended regulatory definitions of “States” and “United States” to include the U.S. territories for purposes of the MDRP. In the alternative, we are proposing to finalize an inclusion date that may be earlier than April 1, 2024, but not before January 1, 2023, based on public comments received. Thus, we are specifically requesting comments from all interested parties on whether April 1, 2024, or an earlier inclusion date, but not earlier than January 1, 2023, would be more appropriate for the amended regulatory definitions. More specifically, we are requesting public comments that will assist us in understanding all relevant concerns related to establishing a new inclusion date, including whether territories are ready to participate in the MDRP, and whether CMS is able to execute appropriate and necessary waivers for territories that do not want to participate. In any case, manufacturers would be required to include their sales to the territories in their AMP and best price calculations based on the inclusion date finalized in a final rule, which we are proposing to be April 1, 2024, or possibly earlier, but no earlier than January 1, 2023 based on public comments.

Therefore, we are requesting comment on our proposal to amend § 447.502 to delay the inclusion date for the the U.S. territories into the regulatory definitions of “States” and “United States” until April 1, 2024. We are also requesting comments on an alternative proposal, which is to finalize an inclusion date that may be earlier than April 1, 2024, but not before January 1, 2023, based on public comments received.

III. Response to Comments

Because of the significant number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble for each applicable comment period, and, if and when we

proceed with a subsequent document, we will respond to the applicable comments in the preamble to that document, as appropriate.

I, Elizabeth Richter, Acting Administrator of the Centers for Medicare & Medicaid Services, approved this document on May 18, 2021.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare &

Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 447—PAYMENT FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1396r–8.

■ 2. Amend § 447.502 by revising the definitions of “States” and “United States” to read as follows:

§ 447.502 Definitions.

* * * * *

States means the 50 States and the District of Columbia and, beginning April 1, 2024, also includes the Commonwealth of Puerto Rico, the Virgin Islands of the United States,

Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

United States means the 50 States and the District of Columbia and, beginning April 1, 2024, also includes the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

* * * * *

Dated: May 21, 2021.

Xavier Becerra,
Secretary, Department of Health and Human Services.

[FR Doc. 2021–11160 Filed 5–26–21; 4:15 pm]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 86, No. 102

Friday, May 28, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS-TM-21-0041]

Meat and Poultry Interstate Shipment and Inspection Readiness Program; Request for Emergency Approval of a New Information Collection

Correction

In notice document 2021-10490 beginning on page 27063 in the issue of Wednesday, May 19, 2021, make the following correction:

On page 27063, in the first column, in the 11th line from the bottom, "May 19, 2021" should read "July 19, 2021".

[FR Doc. C1-2021-10490 Filed 5-27-21; 8:45 am]

BILLING CODE 0099-10-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA-2020-0006]

Information Collection Request; Coronavirus Food Assistance Program

AGENCY: Farm Service Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FSA is requesting comments from interested individuals and organizations on a revision and extension of a currently approved information collection request associated with the Coronavirus Food Assistance Program (CFAP 2.0). The initial notice for this information collection request was published on April 2, 2021. The burden hours from the previously approved OMB information collection request are to be increased in this request to account for new CFAP payments for contract growers and sod and pullet producers.

DATES: We will consider comments that we receive by July 27, 2021.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to: www.regulations.gov and search for Docket ID FSA-2020-0006. Follow the online instructions for submitting comments.
- *Mail, Hand-Delivery, or Courier:* Director, SND, FSA, US Department of Agriculture, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250-0522. In your comment, specify the docket ID FS-2020-0006.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments will be available for inspection online at <http://www.regulations.gov>. Copies of the information collection may be requested by contacting Brittany Ramsburg at the above address.

FURTHER INFORMATION CONTACT: For specific questions related to collection activities, contact Ms. Brittany Ramsburg at (202) 260-9303 (voice); or, by email at: BrittanyRamsburg@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Title: CPAP 2.0.

OMB Control Number: 0560-0297.

Type of Request: Revision.

Abstract: This information collection is required to support CFAP 2.0 information collection activities to provide payments to eligible producers who, with respect to their agricultural commodities, have been impacted by the effects of the COVID-19 pandemic. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibility and assist in the producer's payment calculations. Producers must submit a completed CFAP 2 application and additional documentation for eligibility, such as certifications of compliance with adjusted gross income provisions and conservation compliance activities; those additional documents and forms must be submitted no later than 60 days

from the date a producer signs the application.

The annual burden hours increased by 65,281 in this collection because FSA estimated additional burden hours to account for the new CFAP payments for contract growers and sod and pullet producers that was previously approved under the OMB control number of 0560-0299. The initial notice for OMB 0560-0297 information collection request was published on April 2, 2020, (89 FR 17351); this notice needs to be published to include the added burden hours as indicated in the above.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 1,248,901.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 1,248,901.

Estimated Average Time per Response: 0.741492 hours.

Estimated Total Annual Burden on Respondents: 926,051 hours.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden 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.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2021-11296 Filed 5-27-21; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Submission Requirements and Acceptance Testing Protocols and Requirements for New or Relocated Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors, and Funiculars

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking public comment on a new information collection, form FS-7300-0006, *Submission Requirements and Acceptance Testing Protocols and Requirements for New or Relocated Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors, and Funiculars*.

DATES: Comments must be received in writing on or before July 27, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

Email: curt.panter@usda.gov.

Mail: Curt Panter, Intermountain Region, Regional Office—Engineering, 324 25th Street, Ogden, Utah 84401.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing

any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Curt Panter, Intermountain Region, Regional Office—Engineering, 801-726-2213 or curt.panter@usda.gov. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Submission Requirements and Acceptance Testing Protocols and Requirements for New or Relocated Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors, and Funiculars.

OMB Number: 0596-NEW.

Type of Request: New.

Abstract: Existing form FS-2700-5b, Ski Area Term Special Use Permit, requires the permit holder to be responsible for the design, construction, maintenance, operation, and public safety of improvements authorized by the permit, including new or relocated aerial tramways, aerial and surface lifts, tows, conveyors, and funiculars (hereinafter “passenger ropeways”).

In particular, clause II.B of FS-2700-5b requires all plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans, to be prepared by a licensed engineer, architect, landscape architect, or other qualified professional acceptable to the authorized officer. Clause II.B further provides that these plans and plan revisions must have written approval from the authorized officer before they are implemented and that the authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work. New form FS-7300-0006, Submission Requirements and Acceptance Testing Protocols and Requirements, would also be used for passenger ropeways authorized by other types of special use authorizations besides the Ski Area Term Special Use Permit. The submission requirements in new form FS-7300-0006 align with American National Standard Institute Standard B77.1 (ANSI B77.1) for passenger ropeways, which has been adopted by the Forest Service on National Forest System lands. ANSI B77.1 enumerates documentation, certification, and other requirements for ensuring the integrity of the design, construction, maintenance, and operational safety of passenger

ropeways. New form FS-7300-0006 is needed to ensure that holders of ski area permits or other types of special use authorizations authorizing passenger ropeways submit the requisite information and documentation for Forest Service engineers to assess whether new or relocated passenger ropeways meet design, construction, maintenance, and operational safety requirements in ANSI B77.1.

Estimated Annual Burden: 1 burden hour per response.

Type of Respondents: Businesses and other non-federal organizations and entities.

Estimated Annual Number of Respondents: 8.

Estimated Annual Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 72 hours.

Comment is Invited: Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request provided to the Office of Management and Budget for approval.

Deborah Oakeson,

Acting Director Engineering, Technology and Geospatial Services.

[FR Doc. 2021-11323 Filed 5-27-21; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-52-2021]

Approval of Subzone Status; Woodfield Distribution LLC, Dayton, New Jersey

On April 8, 2021, the Executive Secretary of the Foreign-Trade Zones

(FTZ) Board docketed an application submitted by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting subzone status subject to the existing activation limit of FTZ 49, on behalf of Woodfield Distribution LLC, in Dayton, New Jersey.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 19220, April 13, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 49V was approved on May 25, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 49's 2,000-acre activation limit.

Dated: May 25, 2021.

Elizabeth Whiteman,
Acting Executive Secretary.

[FR Doc. 2021-11347 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-831]

Carbon and Alloy Steel Wire Rod From the Republic of Turkey: Notice of Court Decision Not in Harmony With Amended Final Determination of Antidumping Duty Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order; Notice of Revocation of Antidumping Duty Order, in Part

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

SUMMARY: On May 20, 2021, the United States Court of International Trade (CIT) issued its final judgment in *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Court no. 18-000143, sustaining the Department of Commerce (Commerce)'s second remand determination pertaining to the antidumping duty (AD) investigation of carbon and alloy steel wire rod (wire rod) from the Republic of Turkey (Turkey) covering the period of investigation January 1, 2016, through December 31, 2016. Commerce is notifying the public that the CIT's final judgement is not in harmony with Commerce's amended final determination in that investigation, and that Commerce is amending the amended final determination and the

resulting AD order with respect to the dumping margin assigned to producer and/or exporter Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) and all other producers and/or exporters. In addition, Commerce is amending the amended final determination to exclude merchandise produced and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) from the order.

DATES: Applicable May 30, 2021.

FOR FURTHER INFORMATION CONTACT: Emily Halle, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0176.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2018, Commerce published its *Final Determination* in the AD investigation of wire rod from Turkey.¹ After correcting a ministerial error contained in the *Final Determination*, on May 21, 2018, Commerce published the *Amended Final Determination and Order*, and calculated a revised weighted-average dumping margin of 4.93 percent for Habas, 7.94 percent for Icdas, and 6.44 percent for all other producers/exporters of subject merchandise.²

Icdas and Habas appealed Commerce's *Final Determination*, as modified by the *Amended Final Determination and Order*. On January 28, 2020, the CIT remanded the *Amended Final Determination and Order* to Commerce, directing Commerce to recalculate Habas' and Icdas' duty drawback adjustments using a different calculation methodology than the duty neutral methodology Commerce applied in the *Final Determination*, which allocated the duty drawback over total cost of production.³

In its first remand redetermination, issued in April 2020, Commerce recalculated Icdas' and Habas' duty drawback adjustment by adding the full

amount of exempted duties to Habas' and Icdas' U.S. price, and adding the same per-unit duty amount to normal value as a circumstance-of-sale adjustment.⁴ As a result of the changes in the *First Results of Redetermination*, Commerce calculated estimated weighted-average dumping margins of 3.22 percent for Habas, 8.72 percent for Icdas, and 4.78 percent for all other producers/exporters of subject merchandise.⁵ The CIT remanded Commerce's determination for a second time, ordering Commerce to recalculate normal value without making a circumstance-of-sale adjustment related to the duty drawback adjustment made to U.S. price.⁶

In its final remand redetermination, issued in December 2020, Commerce calculated a duty drawback adjustment for Habas and Icdas without making a circumstance-of-sale adjustment to normal value, resulting in a revised weighted-average dumping margin of 0.00 percent for Habas, and 4.44 percent for Icdas and all other producers/exporters of subject merchandise.⁷

The CIT sustained Commerce's final redetermination.⁸

Timken Notice

In its decision in *Timken*,⁹ as clarified by *Diamond Sawblades*,¹⁰ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's May 20, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Amended Final Determination and Order*. Thus,

⁴ See Final Results of Redetermination Pursuant to Court Remand, *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Ct. No. 18-00143, Slip Op. 20-10, dated April 27, 2020 (*First Results of Redetermination*).

⁵ *Id.* at 44.

⁶ See *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Court No. 18-00143, Slip Op. 20-137 (Sept. 23, 2020) (*Second Remand Order*) at 17.

⁷ See Final Results of Redetermination Pursuant to Second Court Remand, *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Ct. No. 18-00143, Slip Op. 20-137, dated December 11, 2020 (*Second Results of Redetermination*).

⁸ See *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Court No. 18-00143, Slip Op. 21-65 (May 20, 2021) (CIT Final Judgment).

⁹ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁰ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹ See *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

² See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417-18 (May 21, 2018) (*Amended Final Determination and Order*).

³ See *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Court No. 18-00143, Slip Op. 20-10 (January 28, 2020) (*First Remand Order*) at 30.

this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination and Antidumping Duty Order

Because there is now a final court judgment, Commerce is amending its

Amended Final Determination and Order with respect to Habas, Icdas, and all other producers/exporters as follows:

Producer/exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidies)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. ¹¹	0.00	0.00
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	4.44	0.65
All Others	4.44	0.65

Notice of Revocation of Antidumping Duty Order, in Part

Pursuant to section 735(a)(4) of the Act, Commerce “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.”¹² As a result of this amended final determination, Commerce is hereby excluding from this *Order* merchandise produced and exported by Habas, for which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent.¹³ This exclusion will not be applicable to merchandise exported to the United States by Habas in any other producer/exporter combination or by third parties that sourced subject merchandise from the excluded producer/exporter combination.¹⁴ As a result of the exclusion, Commerce will not initiate any new administrative reviews of the AD order with respect to merchandise produced and exported by Habas. However, a review may be conducted with regard to merchandise produced by Habas and exported by another company or produced by any other company and exported by Habas, as such merchandise is not subject to exclusion.

Cash Deposit Requirements for Icdas and All Other Producers/Exporters

Because Icdas and all other producers/exporters do not have superseding cash deposit rates, *i.e.*, there have been no final results published in subsequent administrative reviews for Icdas and all other producers/exporters, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP).

¹¹ As discussed below in the “Liquidation of Suspended Entries” section, entries produced and exported by Habas are excluded from the AD order.

¹² Section 733(b)(3) of the Act defines *de minimis* dumping margin as “less than 2 percent *ad valorem* or the equivalent specific rate for the subject merchandise.”

¹³ See *Second Results of Redetermination* at 7.

¹⁴ *Id.*

Liquidation of Suspended Entries

As a result of this *Amended Final Determination and Order*, in which Commerce calculated a revised weighted-average dumping margin of 0.00 percent for Habas, Commerce is hereby excluding merchandise produced and exported by Habas from the AD order. Accordingly, for entries of merchandise produced and exported by Habas that were entered, or withdrawn from warehouse for consumption, prior to May 30, 2021, Commerce will direct CBP to liquidate such entries without regard to antidumping duties.

For entries of merchandise produced and exported by Habas that were entered, or withdrawn from warehouse for consumption, on or after May 30, 2021, Commerce will direct CBP to continue the suspension of liquidation at a cash deposit rate of 0.00 percent. Pursuant to *Timken*,¹⁵ as clarified by *Diamond Sawblades*,¹⁶ under sections 516A(c) and (e) of the Act, Commerce must suspend liquidation of such entries pending a “conclusive” court decision. If the CIT’s ruling is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by Habas, and entered on or after May 30, 2021, 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) of the Act.

Dated: May 25, 2021.

Christian Marsh,

Acting Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2021–11466 Filed 5–27–21; 8:45 am]

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¹⁵ See *Timken*, 893 F.2d 337.

¹⁶ See *Diamond Sawblades*, 626 F.3d 1374.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–090]

Certain Steel Trailer Wheels 12 to 16.5 Inches in Diameter From the People’s Republic of China: Rescission of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain steel trailer wheels 12 to 16.5 inches in diameter (steel wheels) from the People’s Republic of China (China) for the period April 22, 2019, through August 31, 2020.

DATES: Applicable May 28, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2020, based on timely requests for review of five companies by TRAILSTAR LLC (Trailstar),¹ Trans Texas Tire, LLC (Trans Texas),² and Rimco Inc. (Rimco),³ Commerce

¹ See Trailstar’s Letter, “Request for Administrative Review of the Antidumping Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China,” dated September 30, 2020 (Trailstar’s Review Request) (requesting review of Zhejiang Jingu Company Limited).

² See Trans Texas’ Letter, “Request for Administrative Review of the Antidumping Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China,” dated September 30, 2020 (Trans Texas’ Review Request) (requesting review of Xingmin Intelligent Transportation Systems (Group) Co., Ltd.).

³ See Rimco’s Letter, “Antidumping Duty Order, Certain Steel Wheels 12 to 16.5 Inches from the

published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wheels from China covering the period April 22, 2019, through August 31, 2020.⁴

On November 24 and November 25, 2020, respectively, Trans Texas and Trailstar withdrew their respective review requests.⁵ On January 21, 2021, Rimco withdrew its request for an administrative review.⁶ No other interested parties requested an administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Because Trailstar, Trans Texas, and Rimco's review requests were withdrawn within 90 days of the date of publication of the *Initiation Notice*, and no other interested party requested a review, Commerce is rescinding this review in accordance with 19 CFR 351.213(d)(1), in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period April 22, 2019, through August 31, 2020, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 35 days after the date of publication of this notice in the **Federal Register**.

People's Republic of China: Request for a First Administrative Review," dated September 29, 2020 (Rimco's Review Request) (requesting review of Xiamen Topu Imports & Export Co., Ltd., Shanghai Yata Industry Co., Ltd., and Hangzhou Antego Industry Co. Ltd.).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 68840 (October 30, 2020) (*Initiation Notice*).

⁵ See Trans Texas' Letter, "Withdrawal of Request for Administrative Review of the Antidumping Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China," dated November 24, 2020; see also Trailstar's Letter, "Withdrawal of Request for Administrative Review of the Antidumping Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China," dated November 25, 2020.

⁶ See Rimco's Letter, "Withdrawal of Request for Administrative Review of Antidumping Duty Order, Certain Steel Wheels 12 to 16.5 Inches from the People's Republic of China," dated January 21, 2021.

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 and/or countervailing 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 the antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

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

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

Dated: May 24, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-11346 Filed 5-27-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

DATES: Applicable May 28, 2021

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period January 1, 2021, through March 31, 2021. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT:

Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce's regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.¹ Our most recent notification of scope rulings was published on March 4, 2020.² This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between January 1, 2021, and March 31, 2021.

Scope Rulings Made January 1, 2021 Through March 31, 2021

Canada

A-122-857 and C-122-858: Certain Softwood Lumber Products From Canada

Requestor: The Government of Canada. Identified cedar shakes and shingles are not covered by the scope of the antidumping and countervailing duty orders on certain softwood lumber products from Canada because prior relevant scope rulings, the scope language of the orders, and the ITC's final import injury determination, indicate that cedar shakes and shingles were not intended to be covered by the scope of the orders; March 12, 2021.

A-122-857 and C-122-858: Certain Softwood Lumber Products From Canada

Requestor: Teal Cedar Products Ltd. and Columbia River Shake & Shingle Ltd DBA The Teal Jones Group (collectively, the Teal Jones Group). The Teal Jones Group's cedar shakes and shingles are not covered by the scope of the antidumping and countervailing duty orders on certain softwood lumber products from Canada because they meet the physical description of merchandise previously determined to be outside the scope of the orders; March 15, 2021.

India

A-533-885 and C-533-886: Polyester Textured Yarn From India

Requestor: American & Efird LLC. Wildcat Plus Tex 35 Sewing Thread is covered by the scope of the antidumping and countervailing duty orders on polyester textured yarn from India because the imported product is a form of polyester textured yarn and the

¹ See 19 CFR 351.225(o).

² See *Notice of Scope Rulings*, 86 FR 12629 (March 4, 2021).

scope is expressly broad to include all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness, number of filaments, number of plies, finish, cross section, color, dye method, texturing method, or packing method; March 22, 2021.

Mexico

A-201-836: Light-Walled Rectangular Pipe and Tube (LWRPT) From Mexico

Requestor: Maquilacero S.A. de C.V. Two types of tubing for intermediate bulk container cages are outside the scope of the antidumping duty order on LWRPT from Mexico because the products do not have a rectangular (including square) cross section; February 9, 2021.

People's Republic of China (China)

A-570-928: Uncovered Innerspring Units From China

Requestor: New-Tec Integration Xiamen Co., Ltd. Individual spring modules, which are sold/packaged as individual springs, do not meet the description of subject merchandise covered by the order, *i.e.*, innerspring units which consist of multiple springs joined together in the shape and size of a mattress; January 12, 2021.

A-570-967 and C-570-968: Aluminum Extrusions From China

Requestor: WKW Erbsloeh North America LLC. Certain rear quarter finishers and rubber seals are not covered by the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because they do not contain extruded aluminum. Certain waist finishers, belt moldings, and outer waist belts are covered by the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because they are not fully and permanently assembled and completed at the time of entry; January 28, 2021.

A-570-967 and C-570-968: Aluminum Extrusions From China

Requestor: Phoenix Folding Door Co. Twelve models of folding door kits are not covered by the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because they meet the criteria for exclusion as finished goods kits; February 22, 2021.

A-570-097 and C-570-098: Polyester Textured Yarn From China

Requestor: American & Efird LLC. Wildcat Plus Tex 35 Sewing Thread is covered by the scope of the

antidumping and countervailing duty orders on polyester textured yarn from China because the imported product is a form of polyester textured yarn and the scope is expressly broad to include all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness, number of filaments, number of plies, finish, cross section, color, dye method, texturing method, or packing method; March 22, 2021.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations made during the period January 1, 2021 through March 31, 2021. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to CommerceCLU@trade.gov.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: May 25, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-11374 Filed 5-27-21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB115]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Treasure Island Ferry Dock Project, San Francisco, California

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

ACTION: Notice; proposed issuance of an Incidental Harassment Authorization (IHA); request for comments.

SUMMARY: NMFS has received a request from the City and County of San Francisco, CA (San Francisco) for an incidental harassment authorization (IHA) to take marine mammals incidental to the Treasure Island Ferry Dock Project in San Francisco, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Some changes have occurred during this year's evaluation of the project. Pursuant to

the Marine Mammal Protection Act, NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal IHA 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 June 28, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to ITP.Meadows@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. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://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: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (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 incidental take authorization 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 such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

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.

History of Request

On July 15, 2020, NMFS issued an IHA to San Francisco to take marine mammals incidental to the Treasure Island Ferry Dock Project in San Francisco, California (85 FR 44043, July 21, 2020), effective from July 15, 2020 through July 14, 2021. On March 10, 2021, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested consist of a subset activities that are covered by the initial authorization but will not be completed prior to its expiration. However, because the only remaining work is pile removal, which takes less time per pile, the applicant requested take based on 12 piles maximum removed per day, which was not explicitly discussed as one of the scenarios in the initial IHA process. The initial IHA process explicitly analyzed a number of scenarios for each phase of the work that were clearly described as the worst possible scenarios that could occur among a

possible range of scenarios. The currently requested work is clearly less impactful than those scenarios and thus we believe this situation could qualify as a Renewal IHA. However, out of an abundance of caution, and because there is time for a full 30 day public comment period, we choose to treat this application as a standard submission and not a Renewal. San Francisco requested the new IHA be effective from July 15, 2021 through July 14, 2022.

Description of the Specified Activities and Anticipated Impacts

As described in the 2020 IHA, the project consists of the construction of a ferry terminal, breakwater, fireboat access pier, and removal of an old pier on Treasure Island in the middle of San Francisco Bay. Construction involved driving and/or removal of 36-inch-diameter steel piles and 14-inch steel H piles, driving of 48-inch-diameter steel piles and 24-inch octagonal concrete piles, and removal of 12-inch diameter timber piles that supported the old pier. All pile installation has been completed as has removal of the old pier. The only work that remains is removal of 2 36-inch-diameter steel piles and 64 14-inch diameter steel H piles. Table 1 summarizes the original work authorized in the initial 2020 IHA, work completed to date under the initial 2020 IHA, work expected to be completed before the initial 2020 IHA expires, and work expected to be completed under this newly requested IHA. San Francisco’s request is for take for the work expected to be completed before the initial 2020 IHA expires, and work expected to be completed under this newly requested IHA, just in case some of that work is not completed as expected. Pile removal is expected to take no more than 25 days. Pile removal would use vibratory methods only.

TABLE 1—SUMMARY OF WORK AUTHORIZED, COMPLETED, AND PROPOSED FOR AUTHORIZATION

Activity	Location	Piles				Type
		Number authorized in initial IHA	Number completed to date in initial IHA	Number to be completed before initial IHA expires	Number to be completed in proposed IHA	
Install Temporary Steel Template Piles (Vibratory).	Ferry Pier	4	0	0	0	14-inch steel H-piles.
Remove Temporary Steel Template Piles (Vibratory).	Ferry Pier	12	8	0	2	14-inch steel H-piles.
Install Octagonal Piles for North Breakwater (Impact).	North Breakwater	52	47	0	0	24-inch octagonal concrete.
Install Sheetpiles for North Breakwater (Impact).	North Breakwater	120	98	0	0	14-inch concrete sheetpiles.
Install Temporary Steel Template Piles (Vibratory).	North Breakwater	105	30	0	0	14-inch steel H-piles.
Remove Temporary Steel Template Piles (Vibratory).	North Breakwater	105	32	15	25	14-inch steel H-piles.

TABLE 1—SUMMARY OF WORK AUTHORIZED, COMPLETED, AND PROPOSED FOR AUTHORIZATION—Continued

Activity	Location	Piles				Type
		Number authorized in initial IHA	Number completed to date in initial IHA	Number to be completed before initial IHA expires	Number to be completed in proposed IHA	
Install Temporary Steel Template Batter Piles (Vibratory).	North Breakwater	46	15	0	0	14-inch steel H-piles.
Remove Temporary Steel Template Batter Piles (Vibratory).	North Breakwater	46	16	6	10	14-inch steel H-piles.
Install Temporary Mooring Piles (Vibratory)	Mooring	2	0	0	0	36-inch steel pipe.
Remove Temporary Mooring Piles (Vibratory)	Mooring	2	0	2	0	36-inch steel pipe.
Install Temporary Mooring Batter Piles (Vibratory).	Mooring	4	0	0	0	14-inch steel H-piles.
Remove Temporary Mooring Batter Piles (Vibratory).	Mooring	4	0	4	0	14-inch steel H-piles.
Install Crew Access Piles (Vibratory)	Mooring	2	0	0	0	14-inch steel H-piles.
Remove Crew Access Piles (Vibratory)	Mooring	2	0	2	0	14-inch steel H-piles.
Remove Existing Pier (vibratory or crane cable).	Pier	198	198	0	0	12-inch timber.
Total .....	.....	704	444	29	37	N/A.

Note: Number authorized in initial IHA was maximum expected so total numbers completed and to be completed do not necessarily total to this number.

A detailed description of the demolition and construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial 2020 authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The initial 2020 IHA authorized take from pile driving and removal, by Level A and Level B harassment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*) and harbor porpoises (*Phocoena phocoena*), and take by Level B harassment only of gray whales (*Eschrichtius robustus*), bottlenose dolphins (*Tursiops truncatus*), elephant seals (*Mirounga angustirostris*), and Northern fur seals (*Callorhinus ursinus*). Because only pile removal remains and there will be no simultaneous piling with multiple hammers, Level A harassment take is not necessary nor proposed to be authorized for this new IHA.

The proposed IHA would be effective from July 15, 2021 through July 14, 2022. All documents from the initial 2020 IHA can be viewed from the project web page (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-treasure-island-ferry-dock-project-san-francisco-california>).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial 2020 authorization. NMFS

has reviewed the monitoring data from the initial 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals contained in the supporting documents for the initial 2020 IHA. The only difference is an updated stock abundance estimate for the San Francisco/Russian River stock of harbor porpoises which has decreased from 9,886 to 7,524. We consider this change in our findings below.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial 2020 authorization. NMFS has reviewed the monitoring data from the initial 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of the final IHA for the 2020 authorization. Specifically, the source levels and marine mammal density/

occurrence data applicable to this authorization remain unchanged from the 2020 IHA. Similarly, the stocks taken and methods of take remain unchanged from the 2020 IHA. As noted above, the types of take requested and proposed no longer include Level A harassment take because only pile removal remains and there will be no simultaneous piling with multiple hammers. The only change is the decreased number of days of operation and the necessity of revising the scenarios used to estimate take. No use of multiple hammers or simultaneous removal as was considered in the initial 2020 IHA is planned for this IHA. In addition to not using multiple hammers for this IHA, because of the limited number and type of piles remaining, and the work only being pile removal by vibratory hammer with no installation, the original scenarios used to estimate take and shutdown zones are no longer relevant. The remaining scenarios for this IHA are: (1) Two days of work removing the two 36-inch steel piles and (2) 23 days removing up to 12 steel H piles per day. Both of these scenarios are reductions from the worst case scenarios presented in the initial proposed IHA. The new scenario 1 above has no simultaneous driving, uses only a vibratory hammer with no impact hammering, and involves 36-inch piles rather than the 48-inch piles considered in the worst case scenarios of the initial proposed IHA. The new Scenario 2 above has no simultaneous driving, uses only a vibratory hammer with no impact hammering, and has a maximum of 120 minutes per day of vibratory hammer use as opposed to the worst case scenarios in the initial proposed IHA

which considered up to 180 minutes per day of vibratory hammer use.

The inputs to calculate the Level A and Level B harassment isopleths for the

new scenarios are in Table 2. The resulting Level A and Level B harassment isopleths are in Table 3. These new Level A and Level B

isopleths are smaller than the worst case scenarios considered in the initial proposed IHA.

TABLE 2—NMFS TECHNICAL GUIDANCE USER SPREADSHEET INPUTS TO CALCULATE LEVEL A AND LEVEL B ISOPLETHS FOR THE PILE REMOVAL SCENARIOS

Pile type	14-Inch H	36-Inch steel
Source Level (RMS SPL)	150	170
Number of piles per day	12	2
Duration to remove a single pile (minutes)	10	10
Distance of source level measurement (m)	10	10

TABLE 3—CALCULATED DISTANCES (METERS) TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (m) DURING PILE REMOVAL FOR EACH HEARING GROUP AND PILE TYPE

Pile type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds	Level B
14-inch H	2.0	0.2	3.0	1.2	0.1	1,000
36-inch Steel	13.1	1.2	19.3	7.9	0.6	21,545

As was done in the initial 2020 IHA, we use density data from the multiple years of the San Francisco-Oakland Bay Bridge (SFOBB) project to estimate take for harbor seal, California sea lion, and Harbor porpoise, and for other species we use more qualitative data on observations from the SFOBB project and observations from year one of this

project along with local information on strandings and other biology. The density calculations are shown in Table 4. For bottlenose dolphin, take is still estimated at 0.33 dolphins per day for an estimated Level B harassment take of 9 dolphins. For the other species where we used qualitative information to estimate Level B harassment take in the

initial IHA, we propose Level B harassment take at 40 percent of the take from the initial 2020 IHA, that is 4 Level B harassment takes each for gray whales and northern elephant seals, and 2 takes for northern fur seals. The proposed takes are indicated in Table 5 along with the authorized take from the initial 2020 IHA.

TABLE 4—CALCULATIONS OF LEVEL B HARASSMENT TAKE FROM DENSITY DATA BY SPECIES

	Harbor porpoise	California sea lion	Harbor seal
SFOBB density (animals/square km)	0.17	0.16	3.96
Piling Scenario			
Days of Pile Driving:			
14-inch steel H-pile	23	23	23
36-inch steel pipe	2	2	2
Area of Isopleth in square kilometers:			
14-inch steel H-pile	1.48	1.48	1.48
36-inch steel pipe	117	117	117
Per day take Level B:			
14-inch steel H-pile	0.25	0.24	5.86
36-inch steel pipe	19.89	18.72	463.32
Total Level B Take Calculated	46	43	1,062

TABLE 5—PROPOSED AUTHORIZED AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK AND TAKE AUTHORIZED IN INITIAL 2020 IHA

Species	2020 Authorized take		Proposed Level B take	Percent of stock
	Level B	Level A		
Harbor seal (<i>Phoca vitulina</i>) California Stock	12,461	20	1,062	0.4
Harbor porpoise (<i>Phocoena phocoena</i>) San Francisco—Russian River Stock	538	7	46	0.6
California sea lion (<i>Zalophus californianus</i>) U.S. Stock	502	10	43	<0.1
Gray whale (<i>Eschrichtius robustus</i>) Eastern North Pacific Stock	10	0	4	<0.1
Common bottlenose dolphin (<i>Tursiops truncatus</i>) California Coastal Stock ...	61	0	9	2
Northern elephant seal (<i>Mirounga angustirostris</i>) California breeding Stock	10	0	4	<0.1

TABLE 5—PROPOSED AUTHORIZED AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK AND TAKE AUTHORIZED IN INITIAL 2020 IHA—Continued

Species	2020 Authorized take		Proposed Level B take	Percent of stock
	Level B	Level A		
Northern fur seal (<i>Callorhinus ursinus</i>) California and Eastern North Pacific Stocks	5	0	2	<0.1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial 2020 IHA (except terms related to work already completed (*i.e.*, pile installation and impact hammering) have been removed, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this IHA:

- For in-water heavy machinery work other than pile removal (*e.g.*, standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2)

positioning of the pile on the substrate via a crane;

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile removal activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

- For those marine mammals for which Level B harassment take has not been requested, in-water pile removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and

- If take reaches the authorized limit for an authorized species, pile removal will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to San Francisco's in-water construction activities.

- *Establishment of Shutdown Zones*—San Francisco will establish

shutdown zones for all pile removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group. The largest shutdown zones are generally for low and high frequency cetaceans, as shown in Table 6.

- The placement and number of PSOs during all pile removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile removal. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain), pile removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 6—SHUTDOWN ZONES DURING PILE REMOVAL (METERS) BY SCENARIO

Pile type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
14-inch H	10	10	10	10	10
36-inch Steel	20	10	20	10	10

• *Monitoring for Level A and Level B Harassment*—San Francisco will monitor the Level A and B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of PSOs will allow PSOs to observe marine mammals within the Level A and B harassment zones. However, due to the large Level B harassment zone for 36-inch piles (Table 3), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be

recorded and extrapolated, as necessary, based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

- *Pre-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a re-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B

harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile removal activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

- Pile removal must occur during daylight hours.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Monitoring section of the application and section 5 of the IHA. Marine mammal monitoring during pile removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used;

- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

- San Francisco must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional 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 and species of marine mammals observed; dates and times when in-water 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 mammals observed in the area as necessary.

Two PSOs will be employed. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level B harassment zones as possible. PSO locations are as follows:

(1) At the pile driving site(s) or best vantage point practicable to monitor the shutdown zones; and

(2) For the large Level B harassment zone associated with removal of 36-inch pipe piles, a second PSO will be placed near Pier 33 in San Francisco.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being removed. Pile removal activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS

within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;

- Construction activities occurring during each daily observation period, including how many and what type of piles were removed and by what method (*i.e.*, vibratory);

- Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);

- The number of marine mammals observed, by species, relative to the pile location and if pile removal was occurring at time of sighting;

- Age and sex class, if possible, of all marine mammals observed;

- PSO locations during marine mammal monitoring;

- Distances and bearings of each marine mammal observed to the pile being removed for each sighting (if pile removal was occurring at time of sighting);

- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and

- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, San Francisco shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, San Francisco must 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 IHA-holder must 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 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.

Preliminary Determinations

As described above, the action in this IHA is a subset of the original activities consisting solely of removal of two types of steel pile with a new description of the specific scenarios remaining rather than consideration of the worst case scenarios possible as was done in the initial 2020 IHA. We found that the initial 2020 IHA would have a negligible impact and that the taking would be small relative to population size for all stocks. The only change in this IHA is the small decrease in the estimated abundance for the San Francisco/Russian River stock of harbor porpoises which has decreased from 9,886 to 7,524 and the consideration of the specific removal scenarios required now. Despite this stock size decrease the proposed take of 46 is still less than 10 percent of the stock and is thus small relative to the population size. The other marine mammal information is

identical to the initial 2020 IHA. The potential effects, and the mitigation and monitoring are all less impactful because of the smaller harassment zones sizes for the remaining scenarios. The estimated take is greatly reduced and no Level A harassment take is proposed because of the smaller Level A harassment zone sizes and the lack of multiple hammer use.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial 2020 IHA. This includes consideration of the estimated abundance of the harbor seal stock decreasing slightly and the discussion of the specific scenarios to account for the remaining work. The new scenarios have smaller level A and Level B harassment zones than the worst case scenarios analyzed in the 2020 IHA because of the removal of simultaneous driving, the smaller pile sizes and durations remaining, and the use of only a vibratory hammer in this IHA.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) San Francisco's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, 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 San Francisco for conducting the Treasure Island Ferry Dock Project in San Francisco, California from July 15, 2021 through July 14, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2020 IHA), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction activity at Treasure Island. We also request comment on the potential for 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 our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a 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, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified 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); 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; and

- 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: May 24, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021-11287 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB107]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Law Enforcement Committee (Closed Session); Snapper Grouper Committee; Dolphin Wahoo Committee; Mackerel Cobia Committee; Executive Committee; and Habitat and Ecosystem-Based Management Committee. The meeting week will also include a formal public comment session and a meeting of the Full Council (Partially Closed). Due to public health concerns associated with COVID-19 and current travel restrictions the meeting will be held via webinar.

DATES: The Council meeting will be held from 10 a.m. on Monday, June 14, 2021 until 12 p.m. on Friday, June 18, 2021.

ADDRESSES: Meeting address: The meeting will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302-8440 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: <http://safmc.net/safmc-meetings/council-meetings/>. Webinar registration links for each meeting day will also be available from the Council's website.

Public comment: Public comment on items on this agenda may be submitted through the Council's online comment form at: <https://safmc.wufoo.com/forms/m9mrll0e1fm0f/>. Comments will be accepted from May 31 to June 18, 2021. These comments are accessible to the public, part of the Administrative Record of the meeting, and immediately available for Council consideration.

The items of discussion in the individual meeting agendas are as follows:

Law Enforcement Committee, Monday, June 14, 2021, 10 a.m. Until 10:30 a.m. (Closed Session)

The Committee will review nominations and select recipient of the Council's Law Enforcement Officer of the Year.

Council Session I, Monday, June 14, 2021, 10:30 p.m. Until 5:30 p.m. (Partially Closed)

The Council will meet in Closed Session to review applicants for open seats on the Council's Scientific and Statistical Committee (SSC) and various advisory panels. The Council will then meet in Open Session and receive reports from state agencies, Council liaisons, NOAA Office of Law Enforcement, and the U.S. Coast Guard. The Council will review and approve South Atlantic Research Priorities, receive presentations from NOAA Fisheries Southeast Fisheries Science Center (SEFSC) on the Southeast Longline Surveys and on the Dolphin Participatory Workshops, updates from the Recreational Reporting Workgroup and further discuss and comment on Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad.

Snapper Grouper Committee, Tuesday, June 15, 2021, 8:30 a.m. Until 5:30 p.m. and Wednesday, June 16, 2021 From 8:30 a.m. Until 12 p.m.

The Committee will receive stock assessment reports for gag, golden tilefish, and red snapper. Each report will include a presentation on the stock assessment from NOAA Fisheries SEFSC, recommendations from the

Council's SSC, and a Fishery Overview. The Committee will then develop a management response for each stock assessment. The Committee will review draft Amendment 50 to the Snapper Grouper Fishery Management Plan (FMP) addressing proposed measures for red porgy, review recommendations from its Snapper Grouper Advisory Panel (AP) and consider approving the amendment for public hearings.

The Committee will also receive a Fishery Overview for yellowtail snapper, review an options paper, receive recommendations from the Council's Snapper Grouper AP, and provide guidance on amendment development relative to yellowtail snapper. The Committee will also receive additional recommendations from the Snapper Grouper AP not covered earlier and updates on the South Atlantic Red Snapper Count and Greater Amberjack Count in the Gulf of Mexico and South Atlantic.

Dolphin Wahoo Committee, Wednesday, June 16, 2021, 1:30 p.m. Until 3:45 p.m. and Thursday, June 17, 2021 From 8:30 a.m. Until 10 a.m.

The Committee will review actions and alternatives for Amendment 10 to the Dolphin Wahoo FMP. The Amendment includes actions addressing: Revisions to recreational data and catch level recommendations; modifications to recreational accountability measures; measures to allow properly permitted commercial vessels with trap, pot or buoy gear on board to possess commercial quantities of dolphin and wahoo; removal of the current Operator Card requirement; reductions in the recreational vessel limit for dolphin; and reductions in the recreational bag limit and establishment of a recreational vessel limit for wahoo. The Committee will also review a project plan for amendments to the Dolphin Wahoo FMP.

Formal Public Comment, Wednesday, June 16, 2021, 4 p.m.—Public comment will be accepted via webinar on all items on the Council meeting agenda. Highlighted items: Approval of Amendment 10 to the Dolphin Wahoo FMP for submission to the Secretary of Commerce and public hearing approvals of Amendment 50 to the Snapper Grouper FMP (red porgy) and Coastal Migratory Pelagics Amendment 34 (Atlantic king mackerel). The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

Mackerel Cobia Committee, Thursday, June 17, 2021, 10 a.m. Until 12 p.m.

The Committee will review the Coastal Migratory Pelagic (CMP) Amendment 34 addressing management measures for Atlantic king mackerel and CMP Amendment 32 addressing management measures to end overfishing for Gulf of Mexico cobia. CMP Amendment 34 is scheduled to be approved for public hearings. The Committee will also receive a report from the Mackerel Cobia Advisory Panel.

Executive Committee, Thursday, June 17, 2021, 1:30 p.m. Until 3 p.m.

The Committee will receive a report from the Council Coordinating Committee meeting, review and approve the Council's 2021 Budget, and review the Council's FMP Workplan.

Habitat Protection and Ecosystem-Based Management Committee, Thursday, June 17, 2021, 3 p.m. Until 5 p.m.

The Committee will review public hearing comments on Amendment 10 to the Coral FMP, which would establish a shrimp fishery access area for the deepwater shrimp fishery along the Oculina Bank Habitat Area of Particular Concern, and is scheduled to approve all actions. The Committee will also receive an update on the Habitat Blueprint and a report from the Habitat Protection and Ecosystem-Based Management AP.

Council Session II, Friday, June 18, 2021, 8:30 a.m. Until 12 p.m.

The Council will receive a report from the Executive Director and staff reports on development of the Council's Allocation Tool to inform sector allocation decisions, Climate Change Scenario Planning, the Council's Citizen Science Program, and Outreach and Communications efforts. The Council will receive a report from the Outreach and Communications AP and an update on relevant activities at the International Commission for the Conservation of Atlantic Tunas (ICCAT).

NOAA Fisheries SEFSC staff will provide an update on the status of commercial electronic logbooks. NOAA Fisheries Southeast Regional Office staff will provide an overview of the draft Standardized Bycatch Reporting Methodology document, an update on the For-Hire Electronic Reporting program, and a Protected Resources report.

The Council will receive reports from the following committees: Law Enforcement; Snapper Grouper; Dolphin Wahoo; Mackerel Cobia; Executive; and

Habitat Protection and Ecosystem-Based Management.

The Council will discuss other business, upcoming meetings, and take action as necessary.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11325 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested

via the **Federal Register** on January 13, 2021 (86 FR 2644), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

OMB Control Number: 0648-0272.

Form Number(s): None.

Type of Request: Regular submission (extension and revision of a currently approved information collection).

Number of Respondents: 3,441.

Average Hours per Response:

Application for IFQ/CDQ Hired Master Permit, 1 hour; Application for IFQ/CDQ Registered Buyer Permit, 30 minutes; Application for Replacement of Certificates or Permits, 30 minutes; Application for Eligibility to Receive QS/IFQ by Transfer, 2 hours; QS Holder: Identification of Ownership Interest, 2 hours; Application for Transfer of QS, 2 hours; Application for Transfer of QS/IFQ by Self Sweep Up, 2 hours; Application for Medical Transfer of IFQ, 1.5 hours; Application for Temporary Transfer of Halibut/Sablefish IFQ, 2 hours; (emergency) Application for Temporary Transfer of Halibut/Sablefish IFQ, 2 hours; Annual Report for CDQ IFQ Transfers, 40 hours; QS/IFQ Beneficiary Designation Form, 30 minutes; Appeals, 4 hours; IFQ Administrative Waiver, 6 minutes; Prior Notice of Landing, 15 minutes; IFQ Departure Report, 15 minutes; Transshipment Authorization, 12 minutes; Dockside sales, 6 minutes; Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity, 200 hours; Application for Transfer of Quota Share To or From a Recreational Quota Entity, 2 hours; Recreational Quota Entity Annual Report, 40 hours.

Total Annual Burden Hours: 11,236 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal and revision of this currently approved information collection that contains requirements for the Pacific Halibut and Sablefish Individual Fishing Quota Program (IFQ Program).

The International Pacific Halibut Commission (IPHC) and NMFS Alaska Region manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the *Northern Pacific Halibut Act of 1982*, 16 U.S.C. 773c (Halibut Act). The IPHC promulgates regulations governing the halibut fishery

under the *Convention between the United States Halibut Fishery of the Northern Pacific Ocean and Bering Sea* (Convention). Regulations pursuant to the Convention are set forth at *50 CFR 300 subpart E*.

The North Pacific Fishery Management Council, under the authority of the Halibut Act (with respect to Pacific halibut) and the *Magnuson-Stevens Fishery Conservation and Management Act* (16 U.S.C. 1801 *et seq.*; Magnuson-Stevens Act) (with respect to sablefish), manages the IFQ Program. NMFS Alaska Region administers the IFQ Program. Regulations implementing the IFQ Program are set forth at *50 CFR part 679*.

The IFQ Program provides a limited access system for Pacific halibut in Convention waters in and off Alaska and sablefish fisheries in waters of the Exclusive Economic Zone off Alaska. The IFQ Program provides coastal Alaska communities a source of revenue, while maintaining the social and economic character of the fixed-gear sablefish and halibut fisheries. The IFQ Program provides economic stability for these fisheries while reducing many of the conservation and management problems commonly associated with open-access fisheries. The IFQ Program includes several provisions, such as ownership caps and vessel use caps that protect small producers, part-time participants, and entry-level participants that otherwise could be adversely affected by excessive consolidation.

Participation in the IFQ Program is limited to persons that hold quota share (QS), although there are several very limited provisions for "leasing" of annual IFQ. QS is a transferable permit that was initially issued to persons who owned or leased vessels that made legal commercial fixed-gear landings of Pacific halibut or sablefish in the waters off Alaska from 1988 through 1990. Currently, QS may only be obtained through transfer.

Annually, NMFS issues eligible QS holders an IFQ fishing permit that authorizes participation in the IFQ fisheries. Those to whom IFQ permits are issued may harvest their annual allocation at any time during the eight plus-month IFQ halibut and sablefish seasons.

More information on the IFQ Program is provided on the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/pacific-halibut-and-sablefish-individual-fishing-quota-ifq-program>.

Some of the collection instruments in this information collection are used by

participants in the Western Alaska Community Development Quota (CDQ) Program. The purpose of the CDQ Program is to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI); to support economic development in western Alaska; to alleviate poverty and provide economic and social benefits for residents of western Alaska; and to achieve sustainable and diversified local economies in western Alaska. In fitting with these goals, NMFS allocates a portion of the annual catch limits for a variety of commercially valuable marine species in the BSAI to the CDQ Program. Pacific halibut is one of these species. More information on the CDQ Program is provided on the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/community-development-quota-cdq-program>.

Information collection requirements for the CDQ Program are approved under OMB Control Number 0648–0269.

This information collection is required to manage commercial halibut and sablefish fishing under the Magnuson-Stevens Act, the Halibut Act, and under 50 CFR parts 300 and 679.

This information collection contains the forms used by participants in the IFQ Program to apply for, renew, or replace permits; transfer or lease IFQ and QS; determine compliance with IFQ program requirements; and designate a beneficiary for a QS holder. Two of the permit applications are also used by participants in the CDQ Program. This information collection also contains annual reports and other collections submitted by telephone or other methods and that do not have forms.

The type of information collected includes information on the applicants, transferors, transferees, permits, IFQ or QS types and owners, beneficiaries, vessels, business operations, medical declarations, landings, gear types, products, and harvests and harvest areas.

This information is used to identify and authorize participants in the halibut and sablefish fisheries, to track and transfer quota share, to limit transfers to authorized participants, and to monitor quota share balances and harvest in these fisheries.

Several revisions are made to this collection. The emergency version of the Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ), which was approved under an emergency approval (OMB Control No. 0648–0795), is added for use during emergency situations. Two forms are

revised to remove information that is not needed. The Application for Transfer of QS/IFQ by Self Sweep-up is revised to remove the notary certification, and the Application for Eligibility to Receive QS/IFQ is revised to no longer collect social security numbers. The Application for Eligibility to Receive QS/IFQ and Application for Transfer of QS are revised to collect the NMFS ID number to improved identification.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions.

Frequency: On occasion; Annually.

Respondent's Obligation: Voluntary; Required to Obtain or Retain Benefits; Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0272.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–11311 Filed 5–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB099]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 72 Assessment Webinar III for Gulf of Mexico gag grouper.

SUMMARY: The SEDAR 72 stock assessment process for Gulf of Mexico gag grouper will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 72 Assessment Webinar III will be held June 15, 2021, from 1 p.m. until 3 p.m., Eastern.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the data webinars, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11324 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB126]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone

(EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, June 16, 2021 at 9 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at <https://attendee.gotowebinar.com/register/3662505533044797452>.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will discuss the 2022/23 Scallop Research Set-Aside (RSA): Develop research recommendations for federal funding announcement. Scallop Framework 34: Receive an update on the timeline and likely measures. This action will be initiated at the June 2021 Council meeting. They will also discuss the Rotational Management Program Evaluation and receive an update and provide input on issues that could be considered as part of the review. Also on the agenda is the Leasing Petition: Review Scallopers Campaign letter to NMFS requesting secretarial action to implement a scallop leasing program, develop input for Council to consider. Other business may be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11329 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB125]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, June 14, 2021 at 9 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at <https://attendee.gotowebinar.com/register/3428615220560991756>.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel (AP) will discuss 2022/23 Scallop Research Set-Aside (RSA): Develop research recommendations for federal funding announcement.

They will also discuss Scallop Framework 34 and receive an update on the timeline and likely measures. This action will be initiated at the June 2021 Council meeting. The AP plans to discuss the Rotational Management Program Evaluation and receive an update and provide input on issues that could be considered as part of the review. Also on the agenda is the Leasing Petition: Discuss Scallopers Campaign letter to NMFS requesting secretarial action to implement a scallop

leasing program. Other business may be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11328 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; U.S. Caribbean Fishermen Census

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 23, 2021 (86 FR 10939) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: U.S. Caribbean Fishermen Census.

OMB Control Number: 0648-0716.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 1,500.

Average Hours per Response: 30 minutes.

Total Annual Burden Hours: 750.

Needs and Uses: The National Marine Fisheries Service (NMFS) proposes to conduct a census of small-scale fishers operating in the United States (U.S.) Caribbean. This data collection applies Puerto Rico and the U.S. Virgin Islands. The proposed socio-economic study will collect information on demographics, capital investment in fishing gear and vessels, fishing and marketing practices, economic performance, and miscellaneous attitudinal questions. The data gathered will be used for the development of amendments to fishery management plans, which require descriptions of the human and economic environment and socio-economic analyses of regulatory proposals. The information collected will also be used to strengthen fishery management decision-making and satisfy various legal mandates under the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*; MSA), Executive Order 12866, Regulatory Flexibility Act, Endangered Species Act (ESA), and National Environmental Policy Act (NEPA), and other pertinent statutes.

Affected Public: Business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: MSA and NEPA.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and

entering either the title of the collection or the OMB Control Number 0648-0716.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-11314 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Report of Whaling Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before July 27, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648-0311 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mi Ae Kim, Fishery Management Specialist, National Marine Fisheries Service (NMFS), Office of International Affairs and Seafood Inspection, 1315 East-West Hwy., Silver Spring, MD 20910, 301-427-8365 or mi.ae.kim@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The information to be submitted under this collection of information is necessary to comply with obligations under the International Convention for the Regulation of Whaling (1946). The Schedule of the Convention is binding on the United States and requires that this information be submitted for all whaling operations authorized by the International Whaling Commission (IWC), including the aboriginal subsistence whaling conducted by Native Americans. The Whaling Convention Act (16 U.S.C. 916–916l) authorizes the collection of this information. Regulations codifying the provisions of this act are at 50 CFR part 230. Information on the retrieval and use of dead whales (“stinkers”) is requested in order to have a record of all whales brought to shore and to ensure that whales killed under the IWC quotas are not claimed to have been found dead.

Native Americans may conduct certain aboriginal subsistence whaling under the Whaling Convention Act in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, the IWC, and the Whaling Convention Act, whaling captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, as well as provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA. The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the IWC, which uses it to monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone, fax, email, or in writing. Information on equipment marks must be made in writing. No form is used.

III. Data

OMB Control Number: 0648–0311.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; State, Local, or Tribal government.

Estimated Number of Respondents: 166 (165 whaling captains, one Native American whaling organization).

Estimated Time per Response: 30 minutes for reports on whales struck or on recovery of dead whales, including providing the information to the relevant Native American whaling organization; 5 minutes for the relevant Native American whaling organization to type in each report; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: 100.

Respondent's Obligation: Mandatory.
Legal Authority: Whaling Convention Act (16 U.S.C. 916–916l).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–11344 Filed 5–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee).

DATES: The meeting will be held on June 14, 2021, from 12:30 p.m. to 5 p.m. EDT. These times and the agenda topics described below are subject to change. Refer to the web page listed below for the most up-to-date agenda and dial-in information.

ADDRESSES: The meeting will be held virtually. Refer to the U.S. IOOS Advisory Committee website at <http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/> for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT:

Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240–533–9455; Fax 301–713–3281; Email krisa.arzayus@noaa.gov or visit the U.S. IOOS Advisory Committee website at <http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/>. To register for the meeting, contact Erick Lee, Erick.Lee@noaa.gov.

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by Section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. No. 116–271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary refers to the Committee for review and advice.

The Committee will provide advice on:

(A) Administration, operation, management, and maintenance of the System;

(B) expansion and periodic modernization and upgrade of technology components of the System;

(C) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(D) additional priorities, including—

(i) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation planning and harmful algal bloom forecasting and detection that—

(I) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(II) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(III) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models; (ii) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(iii) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(iv) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(v) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(vi) a multi-region marine sound monitoring system to be—

(I) planned in consultation with the Interagency Ocean Observation Committee, the National Oceanic and Atmospheric Administration, the Department of the Navy, and academic research institutions; and

(II) developed, installed, and operated in coordination with the National Oceanic and Atmospheric Administration, the Department of the

Navy, and academic research institutions; and

(E) any other purpose identified by the Administrator or the Council.

The meeting will be open to public participation after each session (check agenda on website to confirm times.) In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Due to the condensed nature of the meeting, each individual or group providing written public comments will be limited to one comment per public comment period with no repetition of previous comments. Comments can also be submitted in writing during the public comment period through the webinar. Comments will be read into the record, transcribed, and become part of the meeting record. Due to time meeting constraints, all comments may not be addressed during the meeting. Written comments should be received by the Designated Federal Official by June 11, 2021, to provide sufficient time for Committee review. Written comments received after June 11, 2021, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please email your comments to Krisa.Arzayus@noaa.gov and Erick Lee, Erick.Lee@noaa.gov. Advance written statements will be shared with the IOOS AC members and will be included in the meeting public record. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Matters to be Considered: The meeting will focus on (1) Presenting the Committee Recommendations Report to NOAA and IOOC Leadership, (2) Discussing the FY22 President's Budget request, which will be public information by then, and (3) Fall public meeting planning. The latest version of the agenda will be posted at <http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/>.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official at Krisa.Arzayus@noaa.gov and Laura.Gewain@noaa.gov or 240-533-9455 by June 14, 2021.

Krisa M. Arzayus,

Deputy Director, U.S. Integrated Ocean Observing System Office, National Ocean Service.

[FR Doc. 2021-11480 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB111]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Bluefish Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Bluefish Advisory Panel.

DATES: The meeting will be held on Thursday, June 17, 2021, from 9 a.m. to 11 a.m. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street Suite 201, Dover, DE 19901; telephone: (302) 674-2331 or on their website at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Advisory Panel to develop a fishery performance report (FPR). The intent of the FPR is to facilitate a venue for structured input from the Advisory Panel for the bluefish specifications process. The FPR will be used by the MAFMC's Scientific and Statistical Committee (SSC) and the Bluefish Monitoring Committee (MC) when reviewing 2022-2023 management measures designed to achieve the recommended bluefish catch and landings limits.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to K. Collins, (302) 526-5253, at least 5 days prior to the meeting date.

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

Dated: May 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11327 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB133]

Endangered Species; File No. 25694

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Carlos Diez, Department of Natural and Environmental Resources of Puerto Rico, P.O. Box 9020708, Viejo San Juan, PR 00901, has applied in due form for a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before June 28, 2021.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 25694 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 25694 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Jordan Rutland, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The applicant proposes to continue studies of the population structure, trends in relative abundance, distribution, genetics, zoogeography, and epidemiology of green and hawksbill sea turtles in the coastal waters of Puerto Rico. Up to 140 sea turtles of each species would be captured annually by hand or tangle net for photographs, temporary marking, measurements, weights, blood and tissue sampling, and flipper and passive integrated transponder tagging. A subset of 10 turtles of each species would receive a satellite tag (epoxy attachment) prior to release. Another 140 hawksbill turtles and 50 green turtles annually would be harassed during unsuccessful hand captures. The permit would be valid for up to 10 years from the date of issuance.

Dated: May 25, 2021.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021-11349 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB040]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Coastal Pelagic Species Fishery; Applications for Exempted Fishing Permits; 2021-2022 Fishing Year

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

ACTION: Notice of receipt of application; request for comments.

SUMMARY: The Regional Administrator, West Coast Region, NMFS, has made a preliminary determination that three Exempted Fishing Permit applications warrant further consideration. All three applications, two from the California Wetfish Producers Association and one from the West Coast Pelagic Conservation Group, request an exemption from the expected prohibition on primary directed fishing for Pacific sardine during the 2021-2022 fishing year to collect Pacific sardine as part of industry-based scientific surveys. NMFS requests public comment on the applications.

DATES: Comments must be received by June 14, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0042, by the following method:

- **Electronic Submissions:** Submit all public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2021-0042 in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments. The EFP applications will be available under Supporting and Related Materials through the same link.

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 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 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).

FOR FURTHER INFORMATION CONTACT:

Lynn Massey, West Coast Region, NMFS, (562) 436-2462, lynn.massey@noaa.gov.

SUPPLEMENTARY INFORMATION: This action is authorized by the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and regulations at 50 CFR 600.745, which allow NMFS Regional Administrators to authorize exempted fishing permits (EFPs) to test fishing activities that would otherwise be prohibited.

At its April 2021 meeting, the Pacific Fishery Management Council (Council) recommended that NMFS approve three EFP applications for the 2021-2022 Pacific sardine fishing year. All three applications, two from the California Wetfish Producers Association (CWPA) and one from the West Coast Pelagic Conservation Group (WCPCG), are renewal requests for an exemption from the expected prohibition on primary directed fishing for Pacific sardine during the 2021-2022 fishing year; the purpose of the requests are to collect Pacific sardine as part of industry-based scientific surveys. The Council considered these EFP applications concurrently with the 2021-2022 annual harvest specifications for Pacific sardine because expected Pacific

sardine catch under each EFP would be accounted for under the proposed 2021–2022 annual catch limit (ACL), which is 3,329 metric tons (mt). A summary of each EFP application is provided below:

(1) *Proposal for Renewal of Exempted Fishery Permit (EFP) To Allow Take of Pacific Sardine (for Point Sets) in 2021 Nearshore Research Program*: The CWP submitted a renewal application for their CPS Nearshore Cooperative Survey (NCS) program. The purpose of this EFP project is to continue to develop a sampling methodology for estimating CPS biomass in shallow waters that are not accessible to NOAA survey ships. Since 2012 the California Department of Fish and Wildlife, in partnership with the CWP, has been conducting aerial surveys to estimate the biomass and distribution of Pacific sardine and certain other CPS in nearshore waters in the Southern California Bight, and in the Monterey-San Francisco area since the summer of 2017. Currently, there is uncertainty in the biomass estimates from aerial spotter pilots. The CPS–NCS survey aims to quantify that level of uncertainty by capturing CPS schools identified by aerial spotter pilots and validating the biomass and species composition of the schools. If approved, this EFP would allow up to six participating vessels to directly harvest a total of 300 mt of Pacific sardine during the 2021–2022 fishing year. A portion of each point set (*i.e.*, an individual haul of fish captured with a purse seine net) would be retained for biological sampling, and the remainder will be sold by the participating fishermen and processors to offset research costs and avoid unnecessary discard.

(2) *Request for Renewal of Exempted Fishery Permit (EFP) To Allow Fishing of Pacific Sardine For Biological Samples in 2021 Nearshore Research Program*: The CWP submitted a renewal application for their biological sampling EFP project. The primary directed fishery for Pacific sardine has been closed since 2015, and consequently, scientists at the Southwest Fisheries Science Center (SWFSC) have a limited amount of fishery-dependent data to use in their annual stock assessment. The goal of this EFP project is to provide additional biological data (*i.e.*, age and length data from directed harvest) for potential use in Pacific sardine stock assessments. If approved, this EFP would allow up to six participating vessels to directly harvest up to 520 mt of Pacific sardine during the 2021–2022 fishing year. A portion of each landing would be retained for biological sampling by the

California Department of Fish and Wildlife, and the remainder would be sold by the participating fishermen and processors to offset research costs and avoid unnecessary discard.

(3) *Exempted Fishery Permit to continue an industry-federal-state collaborative acoustic survey for CPS in nearshore waters*: The WCPCG submitted a renewal application for their Nearshore Surveillance Acoustic Trawl Methodology Survey of North West Coastal Waters EFP project. Since 2017, the WCPCG has been working with NMFS' SWFSC and the Washington Department of Fish and Wildlife to survey CPS in nearshore Oregon/Washington coastal waters. The purpose of the EFP is to collect biological samples in areas inshore of the SWFSC acoustic trawl survey to better assess species composition and CPS distribution and abundance. If approved, this EFP would allow one research vessel to harvest up to 10 mt of Pacific sardine during the 2021–2022 fishing year. A portion of each set (*i.e.*, an individual haul of fish captured with a purse seine net) would be retained by the Washington Department of Fish and Wildlife for biological sampling, and the remainder of the set would be released from the purse seine net immediately after collecting the biological samples.

Altogether, these EFP projects total 830 mt. If NMFS does not issue these EFPs, then this 830-mt portion of the ACL would be available for harvest by other permissible fishing activities during the 2021–2022 fishing year (*e.g.*, live bait or minor directed harvest).

After publication of this document in the **Federal Register**, NMFS may approve and issue permits to participating vessels after the close of the public comment period. NMFS will consider comments submitted in deciding whether to approve the applications as requested. NMFS may approve the applications in their entirety or may make any alterations needed to achieve the goals of the EFP projects. NMFS may also approve different amounts of Pacific sardine allocation for each EFP project if any changes are made to the 2021–2022 proposed sardine harvest specifications before final implementation.

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

Dated: May 25, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–11331 Filed 5–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB109]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public virtual meetings.

SUMMARY: The Caribbean Fishery Management Council's (Council) District Advisory Panels (DAPs) will hold public virtual meetings to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The DAPs public virtual meetings will be held as follows: St. Croix DAP, June 15, 2021, from 10 a.m. to 12 p.m.; Puerto Rico DAP, June 15, 2021, from 1 p.m. to 3 p.m.; St. Thomas/St. John DAP, June 16, 2021, from 10 a.m. to 12 p.m. All meetings will be at Eastern Day Time.

ADDRESSES: You may join the DAPs public virtual meetings (via Zoom) from a computer, tablet or smartphone by entering the following addresses:

DAP–STT/STJ

Join Zoom Meeting
<https://us02web.zoom.us/j/86262657165?pwd=aGQ4U25rME92d1p1TWo4d3Y3RGFrdz09>

Meeting ID: 862 6265 7165

Passcode: 901759

One tap mobile

+17879451488,,86262657165#,,,,

*901759# Puerto Rico

+17879667727,,86262657165#,,,,

*901759# Puerto Rico

Dial by your location

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

+1 939 945 0244 Puerto Rico

Meeting ID: 862 6265 7165

Passcode: 901759

DAP–PR

Join Zoom Meeting
<https://us02web.zoom.us/j/8622659918?pwd=UitRcnBJRXQyMUpWaEtISEZ6eIVvQT09>

Meeting ID: 862 2265 9918

Passcode: 623876

One tap mobile

+19399450244,,8622659918#,,,,

*623876# Puerto Rico

+17879451488,,8622659918#,,,,

*623876# Puerto Rico

Dial by your location
 +1 939 945 0244 Puerto Rico
 +1 787 945 1488 Puerto Rico
 +1 787 966 7727 Puerto Rico
 Meeting ID: 862 2265 9918
 Passcode: 623876

DAP-STX

Join Zoom Meeting
<https://us02web.zoom.us/j/84523918830?pwd=ZWdleXVrN2VzRW5MdVdJOSTBZVRNQTO9>
 Meeting ID: 845 2391 8830
 Passcode: 507957
 One tap mobile

+17879451488,,84523918830#,,,,
 *507957# Puerto Rico
 +17879667727,,84523918830#,,,,
 *507957# Puerto Rico

Dial by your location
 +1 787 945 1488 Puerto Rico
 +1 787 966 7727 Puerto Rico
 +1 939 945 0244 Puerto Rico
 Meeting ID: 845 2391 8830
 Passcode: 507957

FOR FURTHER INFORMATION CONTACT:

Miguel Rolón, Executive Director,
 Caribbean Fishery Management Council,
 270 Muñoz Rivera Avenue, Suite 401,
 San Juan, Puerto Rico 00918–1903,
 telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

- Call to Order
- Roll Call
- Adoption of Agenda
- 5-Year Strategic Plan
- Other Business

All three meetings will be discussing the same agenda items.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meetings will begin on June 15, 2021 at 10 a.m. EDT, and will end on June 16, 2021, at 12 p.m. EDT. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided for the DAP–PR, on June 15, 2021.

Se proveerá interpretación en español. Para interpretación en español puede marcar el siguiente número para entrar a la reunión: US/Canadá: llame al +1–888–947–3988, cuando el sistema conteste, entrar el número 1*999996#.

For English interpretation you may dial the following number to enter the meeting: US/Canada: call +1–888–947–3988, when the system answers enter the number 2*999996#.

For any additional information on this public virtual meeting, please contact

Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: May 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–11326 Filed 5–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB120]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Army Corps of Engineers Debris Dock Replacement Project, Sausalito, California

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 U.S. Army Corps of Engineers (ACOE) for authorization to take marine mammals incidental to the Debris Dock Replacement Project in Sausalito, California. 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-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 June 28, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to ITP.Meadows@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 received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://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:

Dwayne Meadows, Ph.D., 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of

similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

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 March 17, 2021, NMFS received an application from ACOE requesting an IHA to take small numbers of seven species of marine mammals incidental to pile driving associated with the Debris Dock Replacement Project. The application was deemed adequate and complete on May 20, 2021. The ACOE's request is for take of a small number of these species by Level A or Level B harassment. Neither the ACOE nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The purpose of the project is to replace the existing decaying dock and other onshore infrastructure used to move marine debris collected from San Francisco Bay onto land for disposal. The existing dock will be removed and replaced. The work will involve impact hammering 31 24-inch diameter concrete deck support piles and 17 14-inch diameter timber fender piles for the replacement dock and removal of the decayed dock by cutting or otherwise removing 31 18-inch diameter concrete deck support piles and 17 14-inch diameter timber fender piles. This construction work will occur from September 1, 2021 through August 31,

2022 and will take no more than 26 days of in-water pile work.

The pile driving/removal can result in take of marine mammals from sound in the water which results in behavioral harassment or auditory injury.

Dates and Duration

The work described here is scheduled for September 1, 2021 through August 31, 2022. In-water activities are planned for daylight hours only.

Specific Geographic Region

The activities would occur in Richardson's Bay in north San Francisco Bay (Figure 1). The debris dock is situated adjacent to the ACOE Bay Model Facility in their San Francisco District Base Yard. The debris dock is neighbored by docks for long term mooring of private vessels to the north, and to the south there is a dock used for mooring of ACOE vessels and public use for storing kayaks. Nearby docks within approximately 0.15 miles (mi) (241 meters (m)) may serve as potential haulout locations for pinnipeds. Due to sinuosity of the shoreline, the haulout locations are not within line of site of the project. Pacific herring spawning events are known to take place within Richardson's Bay, which usually begin in late February. Endangered Species Act (ESA) listed Central California Coast Steelhead smolts are known to traverse Richardson's Bay in late February through April.

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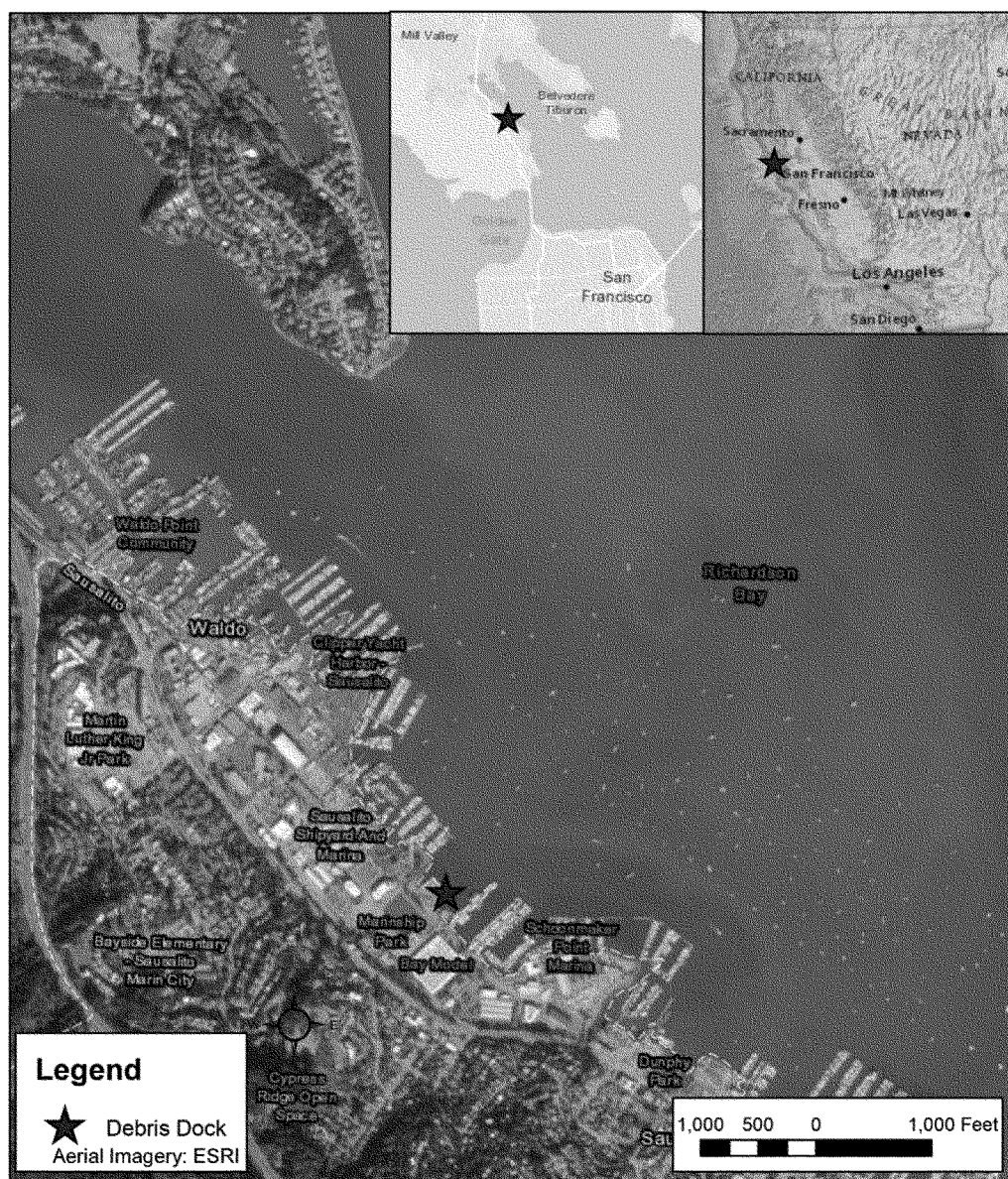


Figure 1-- Map of Proposed Project Area in San Francisco Bay, CA.

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Detailed Description of Specific Activity

The purpose of the project is to replace the decaying seaward portion of a dock. Demolition of the existing debris dock would begin by first removing the fencing that borders the debris dock. The timber fender system would then be removed by pulling or cutting the 17 14-inch diameter timber piles at approximately 2 feet below the mudline without dewatering. The piles would be hoisted out with a crane or tractor from land. The concrete deck would then be removed, along with a bulkhead wall (a vertical concrete retaining wall) which encloses the soil filled inner part of the dock. Temporary shoring (support beams) would be placed to fortify the

bulkhead wall while soil is removed from the landward side, then the bulkhead wall would be demolished and removed. The bulkhead wall will be removed in similar fashion to the concrete deck, by breaking it apart with a tractor and hoisting it out with a crane. Riprap stones would then be removed and stored temporarily, for reuse with the finished dock. Finally, to complete demolition, the 31 18-inch square concrete piles that supported the concrete deck would be cut approximately 2 feet below the mudline without dewatering. They would then be removed by either a crane or tractor from land, such that no barge or other water borne vessel would be used in the demolition. The need to leave the in-situ portion of the piles in place, as

opposed to removing them, stems from the risk of soil liquefaction and creating voids too close to the new pile locations which could cause the piles to shift their alignment or affect other parts of the debris dock structure which will not to be removed. Vibratory methods for removal and installation are thus not possible. Pile cutting will be accomplished with the use of either hydraulic underwater chainsaws or hydraulic pile clippers depending on the contractor's capability.

Construction of the new dock would be in reverse of the demolition, by starting with the impact driving of 31 new octagonal concrete piles (24-inch diameter). Driving the piles until bedrock (approximately 80 feet) would be accomplished with an impact

hammer. After the piles are driven, the 6–10 ton rip rap stones would be replaced and then a new bulkhead wall would be built. The deck of the debris dock would be built by cast-in-place pile caps, pre-cast concrete panels, and a cast-in-place concrete topping. The earthen fill behind the bulkhead retaining wall would then be backfilled. A new timber pile fender system with a total of 17 timber piles (14-inch diameter) would be installed. Timber piles would also be installed using an impact hammer. Pile driving equipment such as a crane will be deployed and

operated from the landside from the inner part of the ACOE Base Yard for concrete piles, with timber piles being driven by equipment deployed on a barge. A bubble curtain to attenuate sound will be used for impact hammering of both timber and concrete piles. Pile driving and removal activities are summarized in Table 1. Finally, to complete the installation, the perimeter fencing, and other incidentals will be installed.

A staging area will be used to store building supplies and construction equipment. The location of the staging

area would be immediately adjacent to the debris dock portion that is to be replaced, within the ACOE Base Yard. The proposed project is currently scheduled to only take one construction season, with construction completed by December.

In summary, the project period includes 10 days of pile removal and 16 days of pile installation activities for which incidental take authorization is requested.

TABLE 1—SUMMARY OF PILE DRIVING AND REMOVAL ACTIVITIES

Method	Pile type	Number of piles	Minutes/ strikes per pile	Piles per day	Duration (days)
Cutting	18-inch concrete	31	5 min	10	7
Cutting	14-inch timber	17	5 min	10	3
Impact Driving	24-inch concrete	31	1,000 strikes ..	10	10
Impact Driving	14-inch timber	17	1,000 strikes ..	10	6
Totals .....	.....	96	.....	.....	26

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. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species

(e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species with expected potential for occurrence in the project area in San Francisco Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no

mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's 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's U.S. Pacific SARs and draft SARs (e.g., Caretta *et al.*, 2020a and b).

TABLE 2—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR

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 Eschrichtiidae: Gray Whale	<i>Eschrichtius robustus</i>	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	138
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae: Bottlenose Dolphin	<i>Tursiops truncatus</i>	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	>2.0
Family Phocoenidae (porpoises): Harbor porpoise	<i>Phocoena phocoena</i>	San Francisco/Russian River	-, -, N	9,886 (0.51, 2019)	66	0

TABLE 2—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	<i>Zalophus californianus</i>	United States	- , - , N	257,606 (N/A, 233,515, 2014).	14,011	>321
Northern fur seal	<i>Callorhinus ursinus</i>	California	- , D, N	14,050 (N/A, 7,524, 2013) ...	451	1.8
		Eastern North Pacific	- , D, N	620,660 (0.2, 525,333, 2016)	11,295	399
Family Phocidae (earless seals):						
Northern elephant seal ...	<i>Mirounga angustirostris</i>	California Breeding	- , - , N	179,000 (N/A, 81,368, 2010)	4,882	8.8
Harbor seal	<i>Phoca vitulina</i>	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: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>. 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 Mortality/Serious Injury (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.

Harbor seal, California sea lion, bottlenose dolphin and Harbor porpoise spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing take of these species. For gray whale, northern fur seal and northern elephant seal, occurrence is such that take is possible, and we have proposed authorizing take of these species also. All species that could potentially occur in the proposed survey areas are included in the ACOE's IHA application (see application, Table 2). Humpback whales could potentially occur in the area. However the spatial and temporal occurrence of this species is very rare, the species is readily observed, and the applicant would shut down pie driving if humpback whales enter the project area. Thus take is not expected to occur, and they are not discussed further.

Bottlenose Dolphin

The California coastal stock of common bottlenose dolphin is found within 0.6 mi (1 kilometer (km)) of shore (Defran and Weller, 1999) and occurs from northern Baja California, Mexico to Bodega Bay, CA. Their range has extended north over the last several decades with El Niño events and increased ocean temperatures (Hansen and Defran, 1990). Genetic studies have shown that no mixing occurs between the California coastal stock and the offshore common bottlenose dolphin stock (Lowther-Thieleking *et al.*, 2015). Bottlenose dolphins are opportunistic foragers: Time of day, tidal state, and oceanographic habitat influence where they pursue prey (Hanson and Defran,

1993). Dive durations up to 15 minutes have been recorded for trained Navy bottlenose dolphins, (Ridgway *et al.*, 1969), but typical dives are shallower and of a much shorter duration (approximately 30 ;*et al.*, 1999, Mate *et al.*, 1995).

Bottlenose dolphins began entering San Francisco Bay in 2010 (Szczepaniak, 2013). They primarily occur in the western Central and South Bay, from the Golden Gate Bridge to Oyster Point and Redwood City. However, one individual has been regularly seen in San Francisco Bay since 2016 near the former Alameda Air Station (Perlman, 2017; W. Keener, pers. comm. 2017), and five animals were regularly seen in the summer and fall of 2018 in the same location (W. Keener, pers. comm. 2019).

Harbor Porpoise

Harbor porpoise occur along the US west coast from southern California to the Bering Sea (Carretta *et al.*, 2019). They rarely occur in waters warmer than 62.6 degrees Fahrenheit (17 degrees Celsius; Read, 1990). The San Francisco-Russian River stock is found from Pescadero, 18 mi (30 km) south of the San Francisco Bay, to 99 mi (160 km) north of the bay at Point Arena (Carretta *et al.*, 2014). In most areas, harbor porpoise occur in small groups of just a few individuals.

Harbor porpoise sightings in the San Francisco Bay declined in the 1930's and were functionally extirpated shortly after. Harbor porpoise occur frequently outside San Francisco Bay and re-entered the bay beginning in 2008 (Stern *et al.*, 2017). They now commonly occur

year-round within San Francisco Bay, primarily on the west and northwest side of the Central Bay near the Golden Gate Bridge, near Marin County, and near the city of San Francisco (Duffy 2015, Keener *et al.*, 2012; Stern *et al.*, 2017). In the summer of 2017 and 2018, mom-calf pairs and small groups (one to four individuals) were seen to the north and west of Treasure Island, and just south of Yerba Buena Island (Caltrans 2018a, 2019; M. Schulze, pers. comm. 2019).

Harbor porpoise must forage nearly continuously to meet their high metabolic needs (Wisniewska *et al.*, 2016). They consume up to 550 small fish (1.2–3.9 in [3–10 cm]; e.g. anchovies) per hour at a nearly 90 percent capture success rate (Wisniewska *et al.*, 2016).

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.*, 1993). They return south the following spring (Heath and Perrin 2008, Lowry and Forney 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.*, 1990; Melin *et al.*, 2008).

California sea lions have occupied docks near Pier 39 in San Francisco, a few miles from the project area, since

1987. The highest number of sea lions recorded at Pier 39 was 1,701 individuals in November 2009. Occurrence of sea lions here is typically lowest in June (during pupping and breeding seasons) and highest in August. Approximately 85 percent of the animals that haul out at this site are males, and no pupping has been observed here or at any other site in San Francisco Bay. Pier 39 is the only regularly used haulout site in the project vicinity, but sea lions occasionally haul out on human-made structures such as bridge piers, jetties, or navigation buoys (Riedman 1990).

Pupping occurs primarily on the California Channel Islands from late May until the end of June (Peterson and Bartholomew 1967). Weaning and mating occur in late spring and summer during the peak upwelling period (Bograd *et al.*, 2009). After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry *et al.*, 1992), and they remain away until spring (March–May), when they migrate back to the breeding colonies. Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin and DeLong, 2000; Melin *et al.*, 2008).

Northern Fur Seal

Two northern fur seal stocks may occur near San Francisco Bay: The California and Eastern North Pacific stocks. The California stock breeds and pups on the offshore islands of California, and forages off the California coast. The Eastern Pacific stock breeds and pups on islands in the North Pacific Ocean and Bering Sea, including the Aleutian Islands, Pribilof Islands, and Bogoslof Island, but females and juveniles move south to California waters to forage in the fall and winter months (Gelatt and Gentry, 2018). Breeding and pupping occur from mid-to late-May into July. Pups are weaned in September and move south to feed offshore California (Gentry, 1998).

Both the California and Eastern North Pacific stocks forage in the offshore waters of California, but usually only sick or emaciated juvenile fur seals seasonally enter the bay. The Marine Mammal Center (TMMC) occasionally picks up stranded fur seals around Yerba Buena and Treasure Islands (NMFS, 2019b).

Northern Elephant Seal

Northern elephant seals are common on California coastal mainland and island sites, where the species pups, breeds, rests, and molts. The largest rookeries are on San Nicolas and San Miguel islands in the northern Channel Islands. Near San Francisco Bay, elephant seals breed, molt, and haul out at Año Nuevo Island, the Farallon Islands, and Point Reyes National Seashore.

Northern elephant seals haul out to give birth and breed from December through March. Pups remain onshore or in adjacent shallow water through May. Both sexes make two foraging migrations each year: One after breeding and the second after molting (Stewart, 1989; Stewart and DeLong, 1995). Adult females migrate to the central North Pacific to forage, and males migrate to the Gulf of Alaska to forage (Robinson *et al.*, 2012). Pup mortality is high when they make the first trip to sea in May, and this period correlates with the time of most strandings. Young-of-the-year pups return in the late summer and fall to haul out at breeding rookeries and small haulout sites, but occasionally may make brief stops in San Francisco Bay.

Harbor Seal

Harbor seals are found from Baja California to the eastern Aleutian Islands of Alaska (Harvey and Goley, 2011). In California there are approximately 500 haulout sites along the mainland and on offshore islands, including intertidal sandbars, rocky shores, and beaches (Hanan, 1996; Lowry *et al.*, 2008).

Harbor seals are the most common marine mammal species observed in the San Francisco Bay. Within the bay they primarily haul out on exposed rocky ledges and on sloughs in the southern San Francisco Bay. Harbor seals are central-place foragers (Orians and Pearson, 1979) and tend to exhibit strong site fidelity within season and across years, generally forage close to haulout sites, and repeatedly visit specific foraging areas (Grigg *et al.*, 2012; Suryan and Harvey, 1998; Thompson *et al.*, 1998). Harbor seals in San Francisco Bay forage mainly within 7 mi (10 km) of their primary haulout site (Grigg *et al.*, 2012), and often within just 1–3 mi (1–5 km; Torok, 1994). Depth, bottom relief, and prey abundance also influence foraging location (Grigg *et al.*, 2012).

Harbor seals molt from May through June. Peak numbers of harbor seals haul out in central California during late May to early June, which coincides with the

peak molt. During both pupping and molting seasons, the number of seals and the length of time hauled out per day increase, from an average of 7 hours per day to 10–12 hours (Harvey and Goley, 2011; Huber *et al.*, 2001; Stewart and Yochem, 1994).

Harbor seals tend to forage at night and haul out during the day with a peak in the afternoon between 1 p.m. and 4 p.m. (Grigg *et al.*, 2012; London *et al.*, 2001; Stewart and Yochem, 1994; Yochem *et al.*, 1987). Tide levels affect the maximum number of seals hauled out, with the largest number of seals hauled out at low tide, but time of day and season have the greatest influence on haul out behavior (Manugian *et al.*, 2017; Patterson and Acevedo-Gutiérrez, 2008; Stewart and Yochem, 1994).

The closest haulout to the project area is on Yerba Buena Island. This haulout site has a daily range of zero to 109 harbor seals during fall months, with the highest numbers hauled out during afternoon low tides (Caltrans, 2004). The Golden Gate National Recreation Area contains a number of haul out areas in San Francisco Bay including Alcatraz Island and Point Bonita at the entrance to the bay (NPS, 2016).

Large concentrations of spawning Pacific herring (*Clupea pallasii*) and migrating salmonids likely attract seals into San Francisco Bay during the winter months (Greig and Allen, 2015). Harbor seals forage for Pacific herring in eelgrass beds in the winter (Schaeffer *et al.*, 2007).

Pupping occurs from March through May in central California (Codde and Allen, 2018). Pups are weaned in four weeks, most by mid-June (Codde and Allen, 2018). Harbor seals molt from June through July (Codde and Allen, 2018) and breed between late March and June (Greig and Allen, 2015). The closest recognized harbor seal pupping site to the project is at Castro Rocks, approximately 12 mi (20 km) from the project area.

Gray Whale

In the fall, gray whales migrate from their summer feeding grounds, heading south along the coast of North America to spend the winter in their breeding and calving areas off the coast of Baja California, Mexico. From mid-February to May, the Eastern North Pacific stock of gray whales can be seen migrating northward with newborn calves along the west coast of the U.S. During the migration, gray whales will occasionally enter rivers and bays (such as San Francisco Bay) along the coast but not in high numbers. In recent years there have been an increased number of gray whales in the San Francisco Bay (W.

Keener, pers. comm. 2019) and there is an ongoing Unusual Mortality Event (<https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2021-gray-whale-unusual-mortality-event-along-west-coast-and>).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals

are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzk and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for

mysticetes (i.e., low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	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. California sea lions are in the otariid family group.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activity can occur from impact pile driving and removal by underwater chainsaws or pile clippers. The effects of underwater noise from the ACOE's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1994, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (e.g., waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction).

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 shipping activity) but also on the ability of sound to propagate

through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving and pile removal by underwater chainsaws or pile clippers. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (e.g., explosions, gunshots, sonic booms, impact pile driving) 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; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (e.g., machinery operations such as drilling or dredging, vibratory pile driving, underwater

chainsaws, pile clippers, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). 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).

One type of pile hammer would be used on this project: impact. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005).

Pile clippers and underwater chainsaws are hydraulically operated equipment. A pile clipper is a large, heavy elongated horizontal guillotine-like structure that is mechanically lowered over a pile down to the mudline or substrate where hydraulic force is used to push a sharp blade to cut a pile. Sounds generated by this demolition equipment are non-impulsive and continuous (NAVAC Southwest, 2020).

The likely or possible impacts of the ACOE's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and the various demolition equipment is the primary means by which marine mammals may be harassed from the ACOE's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to

non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.*, impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson and Hu, 2008). PTS levels for marine mammals are estimates, with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there

are no empirical data measuring PTS in marine mammals, largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise SEL .

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 (similar to those discussed in auditory masking, below). 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 takes place during a time when the animal is traveling through the open ocean, 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. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena 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). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (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. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles requires impact pile driving. There would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal 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); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). 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; Wartok *et al.*, 2004; Southall *et al.*, 2007; 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). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) 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 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.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.*, pile driving) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal

monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.*, documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 m of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat, we expect similar behavioral responses of marine mammals to the ACOE's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.*, small area movements).

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 sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., 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), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

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). 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., pile driving, 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. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The San Francisco area contains active military and commercial shipping, ferry operations, as well as numerous recreational and other commercial vessel and background sound levels in the area are already elevated.

Potential Effects of Underwater Chainsaw and Pile Clipper Sounds—Underwater chainsaws and pile clippers may be used to assist with removal of piles. The sounds produced by these activities are of similar frequencies to the sounds produced by vessels (NAVFAC Southwest, 2020), and are anticipated to diminish to background noise levels (or be masked by background noise levels) in San Francisco Bay relatively close to the project site. Therefore, the effects of this equipment are likely to be similar to those discussed above in the *Behavioral Harassment* section.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could

cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been ‘taken’ because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The ACOE’s construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify Richardson’s and San Francisco Bay 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 of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6-m) radius around the pile (Everitt *et al.*, 1980). The sediments of the project site are sandy and will settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local strong currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels

to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat (e.g., the impacted area is mostly in Richardson's Bay only) of San Francisco Bay and does not include any Biologically Important Areas or other habitat of known importance. The area is highly influenced by anthropogenic activities. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in San Francisco Bay. At best, the impact area provides marginal foraging habitat for marine mammals and fish. Furthermore, pile driving and removal at the project site would not obstruct 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 avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

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). 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 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, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse 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; Cott *et al.*, 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

Because of the rarity of use and research, the effects of pile clippers and underwater chainsaws are not fully known; but given their similarity to ship noises we do not expect unique effects from these activities.

The most likely impact to fish from pile driving and removal and demolition activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid

return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project area. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in San Francisco Bay are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

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 action 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 of fish and marine mammal foraging habitat in the nearby vicinity. Thus, 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 this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

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 primarily be by Level B harassment, as use of the acoustic source (*i.e.*, vibratory or impact pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for pinnipeds and harbor porpoise because predicted auditory injury zones are larger. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which 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 basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Due to the lack of marine mammal

density, NMFS relied on local occurrence data and group size to estimate take for some species. Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above

received levels of 120 dB re 1 microPascal (μ Pa) (root mean square (rms)) for continuous (*e.g.*, vibratory pile-driving) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, impact pile driving) or intermittent (*e.g.*, scientific sonar) sources.

The ACOE's proposed activity includes the use of continuous (underwater chainsaw and pile clippers) and impulsive (impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μ Pa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The ACOE's activity includes the use of impulsive (impact pile-driving) and non-impulsive (pile cutting methods) sources.

These thresholds are provided in Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB	Cell 10: $L_E,OW,24h$: 219 dB.

*Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. 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 will feed into identifying the area

ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

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 via sound generated by the primary components of

the project (*i.e.*, impact pile driving, pile clippers and underwater chainsaws).

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (see Table 5). Data for the pile clippers and underwater

chainsaws come from data gathered at U.S. Navy projects in San Diego Bay (NAVFAC SW, 2020), the source levels used are from the averages of the maximum source levels measured, a somewhat more conservative measure than the median sound levels we typically use. The source level for an underwater chainsaw is 150 dB RMS and the source level for a large pile clipper is 161 dB RMS (NAVFAC SW,

2020). Because the ACOE's as yet unhired contractor has not decided which of the various pile removal methods it will use, we only use a worst-case scenario of operation using the loudest sound producing method (large pile clippers) to consider the largest possible harassment zones and estimated take.

TABLE 5—PROJECT SOUND SOURCE LEVELS

Method	Pile type	Estimated noise level	Source
Cutting	18-inch concrete	161 dB RMS	NAVFAC SW 2020.
Cutting	14-inch timber	161 dB RMS	NAVFAC SW 2020.
Impact Driving	24-inch concrete	159 dB SEL, 184 dB Peak	Illingworth and Rodkin, Inc., 2019.
Impact Driving	14-inch timber	155 dB SEL, 175 dB Peak	Table I.2–3 (CalTrans 2015).

Note: SEL = single strike sound exposure level; dB Peak = peak sound level; RMS = root mean square. Impact driving source levels reduced by 5 dB to account for use of bubble curtain.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R1/R2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most

appropriate assumption for the ACOE's proposed activity in the absence of specific modelling.

The ACOE determined underwater noise would fall below the behavioral effects threshold of 160 dB RMS for impact driving at 22 m and the 120 dB rms threshold for pile cutting at 5,412 m. It should be noted that based on the bathymetry and geography of San Francisco Bay, sound will not reach the full distance of the Level B harassment isopleths in all directions.

Level A Harassment Zones

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 take by Level A harassment. 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. For stationary sources such as impact pile driving or removal using any of the methods discussed above, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. We used the User Spreadsheet to determine the Level A harassment isopleths. Inputs used in the User Spreadsheet or models are reported in Table 1 and the resulting isopleths are reported in Table 6 for each of the construction methods and pile types.

TABLE 6—LEVEL A AND LEVEL B ISOPLETHS (METERS) FOR EACH PILE TYPE AND METHOD

Method	Pile type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids	Level B
Cutting	18-inch concrete	6	0.5	8.9	3.7	0.3	5412
Cutting	14-inch timber	6	0.5	8.9	3.7	0.3	5412
Impact Driving	24-inch concrete	116.4	4.1	138.7	62.3	4.5	22
Impact Driving	14-inch timber	63	2.2	75.1	33.7	2.5	22

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Here we describe how the information

provided above is brought together to produce a quantitative take estimate.

Bottlenose Dolphin

Density data for this species in the project vicinity do not exist. San Francisco Oakland Bay Bridge (SFOBB)

project monitoring showed two observations of this species over 6 days of monitoring in 2017 (CalTrans 2018). One common bottlenose dolphin is sighted with regularity near Alameda (GGCR 2016). Based on the regularity of the sighting in Alameda and the SFOBB

observations of approximately 0.33 dolphin a day, we propose the Level B harassment take equivalent to 0.33 dolphins per day for the 26 proposed days of the project, or 9 common bottlenose dolphin (Table 70). Because the Level A harassment zones are relatively small and we believe the Protected Species Observer (PSO) will be able to effectively monitor the Level A harassment zones, we do not anticipate or propose take by Level A harassment of bottlenose dolphins.

Harbor Porpoise

Density data for this species from SFOBB monitoring was 0.17/km² (CalTrans 2018). Based on the different pile types and methods there are three different sized ensonified areas to be considered to estimate Level B harassment take (Table 8). Multiplication of the above density times the corresponding ensonified area and duration, summing the results for the three methods, and subtracting the overlap of Level A take (below) to avoid double-counting of take, leads to a proposed Level B harassment take of 21 harbor porpoise (Table 7).

Similarly, calculating expected Level A harassment take as density times the corresponding Level A harassment ensonified area and duration for each method results in an estimate that less than one harbor porpoise may enter a Level A harassment zone during the project (see Table 14 of application). Given the relatively high density and larger size of the Level A isopleths for harbor porpoises (Table 6, high-frequency cetaceans) we consider Level A harassment take is a possibility. However, we recognize that harbor porpoises travel in groups of up to 10 individuals and can be quick and somewhat cryptic, so there is potential that underwater mammals may go undetected before spotted in the Level A harassment and shutdown zone. Based on this observation we propose Level A harassment take of 2 harbor porpoise.

California Sea Lion

Density data for this species from SFOBB monitoring was 0.16/km² (CalTrans 2018). Based on the different pile types and methods there are three different sized ensonified areas to be considered to estimate Level B harassment take (Table 8). Multiplication of the above density times the corresponding ensonified area and duration, and summing the results for the three methods, and subtracting

the overlap of Level A take (below) to avoid double-counting of take, leads to a proposed Level B harassment take of 20 California sea lions (Table 7).

Similarly, calculating expected Level A harassment take as density times the corresponding Level A harassment ensonified area and duration for each method results in an estimate that less than one California sea lion will enter a Level A harassment zone (see Table 13 of application). Given the relatively high density and behavior of California sea lions we consider Level A harassment take is a possibility. Based on this observation we propose Level A harassment take of 2 California sea lions.

Northern Fur Seal

Density data for this species in the project vicinity do not exist. SFOBB monitoring showed no observations of this species (CalTrans 2018). None were observed for the Treasure Island Ferry Dock project in 2019 (Matt Osowski, personal communication). The Marine Mammal Center rescues about five northern fur seals in a year, and they occasionally rescue them from Yerba Buena Island and Treasure Island (TMMC, 2019). To be conservative we propose Level B harassment take of three northern fur seals. Because the Level A harassment zones are relatively small and we believe the Protected Species Observer (PSO) will be able to effectively monitor the Level A harassment zones, and the species is rare, we do not anticipate or propose take by Level A harassment of northern fur seals.

Northern Elephant Seal

Density data for this species in the project vicinity do not exist. SFOBB monitoring showed no observations of this species (CalTrans 2018). None were observed for the Treasure Island Ferry Dock project in 2019 (Matt Osowski, personal communication). Out of the approximately 100 annual northern elephant seal strandings in San Francisco Bay, approximately 10 individuals strand nearby at Yerba Buena or Treasure Islands each year (TMMC, 2020). Therefore, we propose the Level B harassment take of 5 northern elephant seals. Because the Level A harassment zones are relatively small and we believe the PSO will be able to effectively monitor the Level A harassment zones, and the species is rare, we do not anticipate or propose take by Level A harassment of northern elephant seals.

Harbor Seal

Density data for this species from SFOBB monitoring was 3.92/km² (CalTrans 2018). Based on the different pile types and methods there are three different sized ensonified areas to be considered to estimate Level B harassment take (Table 8). Multiplication of the above density times the corresponding ensonified area and duration, summing the results for the three methods, and subtracting the overlap of Level A take (below) to avoid double-counting of take, leads to a proposed Level B harassment take of 527 harbor seals (Table 7).

Similarly, calculating expected Level A harassment take as density times the corresponding Level A harassment ensonified area and duration for each method results in an estimate that less than one harbor seal may enter a Level A harassment zone during the project (see Table 12 of application). Given the relatively high density and size of the Level A isopleths for harbor seals (Table 6, phocid pinnipeds) we consider Level A harassment take is a possibility. We recognize that harbor seals can occur in moderate and rarely large size groups and can be quick and somewhat cryptic, so there is potential that underwater mammals may go undetected before spotted in the Level A harassment and shutdown zone. Based on this observation we propose Level A harassment take of 2 harbor seals.

Gray Whale

Density data for this species in the project vicinity do not exist. SFOBB monitoring showed no observations of this species (CalTrans 2018). None were observed for the Treasure Island Ferry Dock project in 2019 (Matt Osowski, personal communication). Approximately 12 gray whales were stranded in San Francisco Bay from January to May of 2019 (TMMC, 2019) and four stranded in the vicinity on one week in 2021 (<https://www.washingtonpost.com/science/2021/04/11/whales-sf-bay-beaches/>). Because recent observations are not well understood, Sausalito sits near the entrance to the bay, and as a conservative measure, we propose Level B harassment take of 2 gray whales. Because the Level A harassment zones are relatively small and we believe the PSO will be able to effectively monitor the Level A harassment zones, and the species is rare, we do not anticipate or propose take by Level A harassment of gray whales.

TABLE 7—PROPOSED AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Scientific name	Stock	Level A harassment	Level B harassment	Percent of stock
Harbor seal	<i>(Phoca vitulina)</i>	California Stock	2	527	1.7
Harbor porpoise	<i>(Phocoena phocoena)</i>	San Francisco—Russian River Stock.	2	21	0.3
California sea lion	<i>(Zalophus californianus)</i>	U.S. Stock	2	20	<0.1
Gray whale	<i>(Eschrichtius robustus)</i>	Eastern North Pacific Stock	0	2	<0.1
Bottlenose dolphin	<i>(Tursiops truncatus)</i>	California Coastal Stock	0	9	2
Northern elephant seal	<i>(Mirounga angustirostris)</i>	California Breeding Stock ...	0	5	<0.1
Northern fur seal	<i>(Callorhinus ursinus)</i>	California and Eastern North Pacific Stocks.	0	3	<0.1

TABLE 8—CALCULATIONS TO ESTIMATE LEVEL B HARASSMENT TAKE

	Harbor seal	Sea lion	Harbor porpoise
SFOBB Species density (animals/square kilometer (km ²))	3.96	0.16	0.17
Days of Pile Driving/Cutting:			
24-inch Concrete	10	10	10
14-inch Timber	6	6	6
Pile Cutting	10	10	10
Area of Isopleth in km ² :			
24-inch Concrete	0.00151	0.00151	0.00151
14-inch Timber	0.00151	0.00151	0.00151
Pile Cutting	13.3456	13.3456	13.3456
Per day take Level B:			
24-inch Concrete	0.006	0.0002	0.0003
14-inch Timber	0.006	0.0002	0.0003
Pile Cutting	52.8486	2.1353	2.2688
Total Level B Take Calculated	528.58	21.36	22.69
Total Level B Take Estimated	529	22	23

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, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed in the IHA:

- Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such

activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions;

- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant ACOE staff prior to the start of all pile driving activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood;

- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;

- The ACOE will establish and implement the shutdown zones indicated in Table 9. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal

hearing group. The ACOE wishes to simplify implementation of the relatively small shutdown zones and has proposed using a single shutdown zone distance for each activity rather than separate zones for each hearing group as we minimally require typically. Therefore the shutdown zones in Table 9 are based on the largest possible Level A harassment zones calculated from the isopleths in Table 6.

- Employ PSOs and establish monitoring locations as described in the application and Section 5 of the IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal one PSO must be used. The PSO will be stationed as close to the activity as possible;

- The placement of the PSO during all pile driving and removal and drilling activities will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.*, fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;

- Monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made;

- If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal;

- The ACOE must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;

- Use a bubble curtain during impact pile driving and ensure that it is operated as necessary to achieve

optimal performance, and that no reduction in performance may be attributable to faulty deployment. At a minimum, the ACOE must adhere to the following performance standards: The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact. Air flow to the bubble rings must be balanced around the circumference of the pile.

TABLE 9—SHUTDOWN ZONES (METERS) FOR EACH PILE TYPE AND METHOD

Pile size, type, and method	Shutdown zone
24-inch concrete, impact	140
14-inch timber, impact	80
14 and 18-inch pile cutting	10

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 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 in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which

take is anticipated (*e.g.*, presence, abundance, distribution, density);

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

Visual Monitoring

- Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following: PSOs must be independent (*i.e.*, not construction personnel) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training. PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

- PSOs must record all observations of marine mammals as described in the Section 5 of the IHA, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed;

PSOs must have the following additional 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 and species of marine mammals observed; dates and times when in-water 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 mammals observed in the area as necessary;
- The ACOE must establish the following monitoring locations. For all pile driving and cutting activities, a minimum of one PSO must be assigned to the active pile driving or cutting location to monitor the shutdown zones and as much of the Level B harassment zones as possible.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact or cutting) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.*, genus/species,

lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (PR.ITP.MonitoringReports@noaa.gov), NMFS and to West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the ACOE must 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 IHA-holder must 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 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.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the

nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

The Level A harassment zones identified in Table 6 are based upon an animal exposed to impact pile driving multiple piles per day. Considering duration of impact driving each pile (up to 20 minutes) and breaks between pile installations (to reset equipment and move pile into place), this means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement throughout the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (e.g., PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (north-central San Francisco Bay including Richardson's Bay) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further the amount of take proposed to be authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving and removal would occur across nine months, any harassment would be temporary. There are no other areas or times of known biological importance for any of the affected species.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. 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 will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will 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 the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Authorized Level A harassment would be very small amounts and of low degree;
- No important habitat areas have been identified within the project area;
- For all species, San Francisco Bay is a very small and peripheral part of their range;
- The ACOE would implement mitigation measures such as bubble curtains, soft-starts, and shut downs; and
- Monitoring reports from similar work in San Francisco Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

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 above, only small numbers of incidental take may be authorized under section 101(a)(5)(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 of all species (in fact, take of individuals is less than 10 percent of the abundance of the affected stocks, see Table 7). This is likely a conservative estimate because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

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 will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, 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 the ACOE to conduct the Debris Dock Replacement project in Sausalito, CA from September 1, 2021 through August 31, 2022, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act.

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 Debris Dock Replacement project. We also request at this time 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 Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that 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); 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; and

- 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 25, 2021.

Catherine Marzin,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2021-11333 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Gear Identification Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 25, 2021, (86 FR 6873) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Marine Fisheries Service.

Title: West Coast Region Gear Identification Requirements.

OMB Control Number: 0648-0352.

Form Number(s): None.

Type of Request: Extension of a current information collection.

Number of Respondents: 942.

Average Hours per Response: 15 minutes per marking.

Total Annual Burden Hours: 848.

Needs and Uses: This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The marking of fishing gear is also valuable

in actions concerning damage, loss, and civil proceedings. The regulations specify that fishing gear must be marked with the vessel's official number, Federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked (*e.g.*, location and color). Law enforcement personnel rely on gear marking information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. Gear violations are more readily prosecuted when the gear is marked, and this allows for more cost-effective enforcement. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear and the gear are not illegally placed. Cooperating fishermen also use the gear marking numbers to report suspicious or non-compliant activities that they observe, and to report placement or occurrence of gear in unauthorized areas. The identifying number on fishing gear is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred, and more burdensome regulations are avoided.

Affected Public: Business or other for-profit organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 660.12.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0648-0352.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-11313 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB015]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Geophysical Survey in the Arctic 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 the University of Alaska Geophysics Institute (UAGI) for authorization to take marine mammals incidental to a geophysical survey in the Arctic Ocean. The proposed survey would be funded by the National Science Foundation (NSF). 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 June 28, 2021.

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.Corcoran@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: Kim Corcoran, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, or for anyone who is unable to comment via electronic mail, please call the contact listed above.

SUPPLEMENTARY INFORMATION:**Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings.

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.

NMFS plans to adopt the NSF’s Environmental Assessment (EA), as we have preliminarily determined that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NSF’s EA is available at www.nsf.gov/geo/oce/envcomp/.

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 February 12, 2021, NMFS received a request from UAGI for an IHA to take marine mammals incidental to a geophysical survey in the Arctic Ocean. The application was deemed adequate and complete on April 6, 2021. UAGI’s request is for take of 13 species of marine mammals, by Level B harassment only. No Level A harassment is anticipated. Neither UAGI nor NMFS expects serious injury or mortality to result from this activity. Therefore, an IHA is appropriate.

Description of Proposed Activity**Overview**

Researchers at UAGI, with funding from NSF, propose to conduct a seismic survey from the Research Vessel (R/V) *Sikuliaq* in the Arctic Ocean to document the structure and stratigraphy of the Chukchi Borderland and adjacent Canada basin. The proposed activity is planned to take place in late summer 2021 (August/September) with a total of 30 days of data acquisition. The survey would include both high energy and low energy components. High-energy ocean bottom seismometer (OBS) refraction surveys will use a 6-airgun, 3120 cubic inches (in³) array and consist of ~12 percent of total survey effort (henceforth referred to as high-energy survey). Low-energy multi-channel seismic (MCS) reflection surveys will use a 2-airgun array with a total discharge volume of 1040 in³ and consist of ~88 percent of total survey effort (henceforth referred to as low-energy survey).

Dates and Duration

The proposed activity will occur between August and September, 2021. The activity is planned to occur for 45 days total, with ~30 days dedicated to seismic data acquisition (with 24-hours

a day operations), ~8 days devoted to transit and 7 days used for equipment deployment and recovery.

Specific Geographic Region

The proposed surveys would occur within ~73.5–81.0°N, ~139.5–168°W (≥300 kilometer (km) north of Utqiagvik). Representative survey track lines can be seen in Figure 1. Some deviation in track lines, 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. Thus, the track lines could occur anywhere

within the coordinates noted above and within the study area. Four percent of the surveys will occur within the U.S. Exclusive Economic Zone (EEZ) with the remaining part of the survey occurring beyond the EEZ. The activity will take place in depths ranging from 200–4,000 meters (m). The R/V *Sikuliaq* would likely leave and return to Nome, AK.

The low-energy survey activity will begin ~300 km from the Alaskan coastline (North of Utqiagvik) and extend ~800 km north from the initial survey site (*i.e.*, the survey would occur ~300–1,100 km from the Alaska coastline). The high-energy survey

activity will only occur ~530 km from the coastline and occur only in the northeastern part of the survey area (See Figure 1). Eighty percent of the total survey will occur in deep waters (>1,000m) with the remainder of the survey occurring in intermediate depth waters (100–1,000 m); no surveying will occur in waters <100 m deep. All high-energy surveys (680 km total) will occur in deep waters, while 67 percent of low-energy surveys will occur in deep waters (3,981 km) with the remainder occurring in intermediate depth waters (1,189 km or 23 percent).

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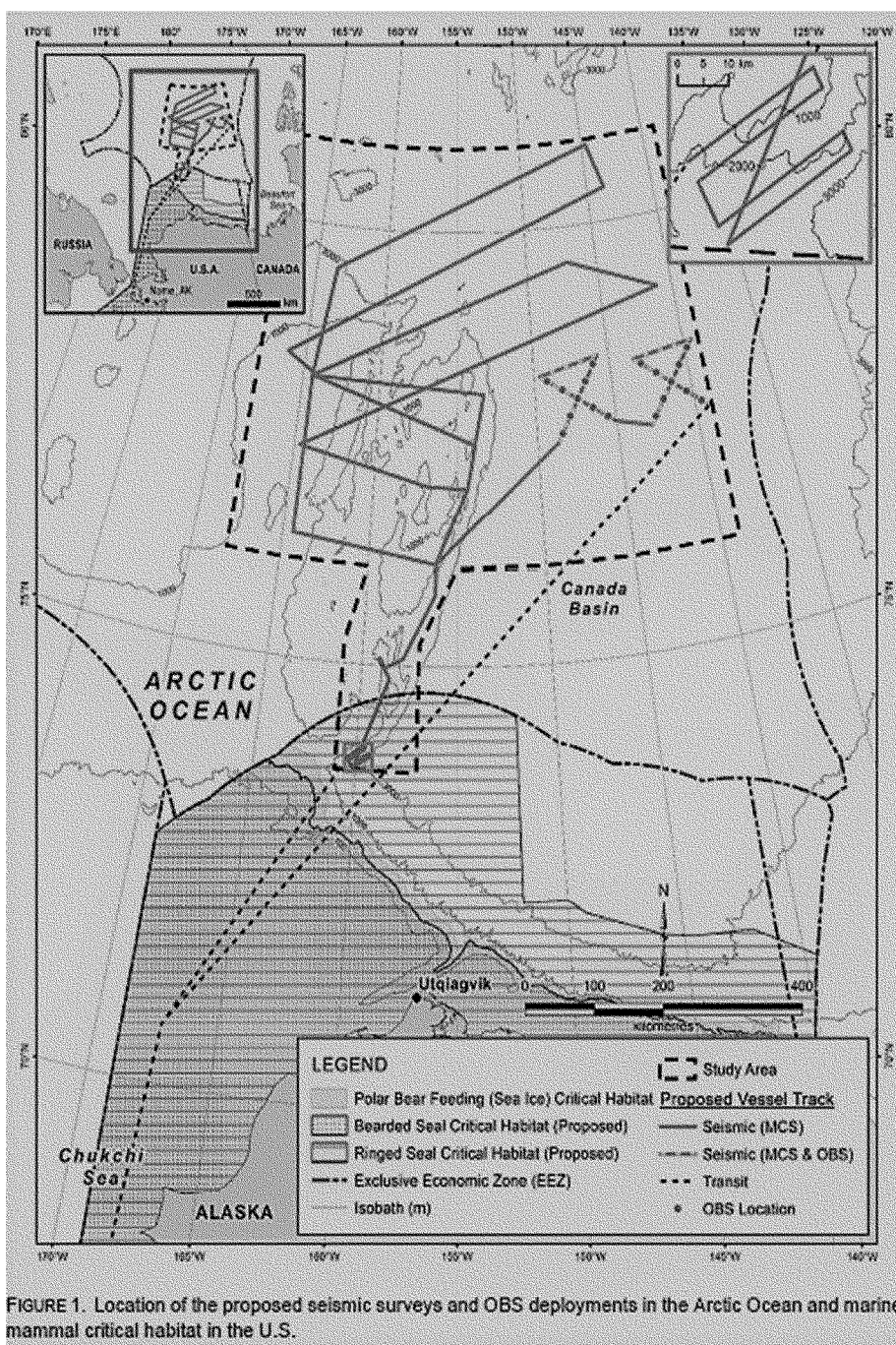


Figure 1. Location of the proposed seismic surveys and OBS deployments in the Arctic Ocean and Endangered Species Act critical habitat in the U.S.

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Detailed Description of Specific Activity

The proposed study would use low-energy two-dimensional (2-D) seismic surveying to document the history, structure, and stratigraphy of the Chukchi Borderland and adjacent Canada Basin, and use high-energy seismic refraction data in the Canada Basin to characterize the deep crustal

structure associated with an extinct mid-ocean ridge in the central basin.

The procedures to be used for the proposed marine geophysical survey would include conventional seismic methodology. The survey would involve one source vessel, R/V *Sikuliaq*, which has a cruising speed of 10 knots (kt), and would tow an array of 6 airguns (520 in³ (8,521.27 cm³) each) and a total possible discharge volume of ~3,120 in³ during high-energy surveys. During low-

energy reflection surveys, a 2-airgun array (at 520 in³ each) would be used with a total discharge volume of 1,040 in³. Both arrays will be towed at a depth of 9m. During low-energy surveys (~88 percent of total line km), a 1–3 km long hydrophone streamer (depending on ice conditions) would be employed as the receiving system, and high-energy surveys (~12 percent of total line km) would employ nine OBSs as the receiving system. As the airgun arrays

are towed along the survey lines, the OBSs would receive and store the returning acoustic signals internally for later analysis, and the hydrophone streamer would transfer the data to the on-board processing system. The airguns would fire at a shot interval of 35 m (~15 seconds (s)) during the low-energy surveys and at a 139-m (~60 s) interval during the high-energy refraction surveys. The airguns would operate at a firing pressure of 2,540 pounds per square inch (psi).

In addition to the aforementioned planned survey lines, some lines, as indicated in Figure 1, will be surveyed twice: Once for low-energy reflection and again for high energy refraction. These surveys would take place near the end of operations in the northeastern part of the survey area (Fig. 1); however, the location of these surveys could shift slightly to ensure one survey occurs over the extinct ridge axis and the other on hyper-extended continental crust. A total of nine OBSs would be deployed twice for a total of 18 deployment sites during high energy survey effort. Nine OBSs would be deployed during low-energy surveying, then high-energy refraction data would be acquired along these same lines, followed by retrieval of the OBS equipment, before R/V *Sikuliaq* would travel to the next site to deploy all nine OBSs again.

Approximately 5,850 total line km would be surveyed, including 5,170 km of low-energy surveys, and 680 km of high-energy surveys. There could be additional seismic operations associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard. As a result, a 25 percent buffer has been added in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed. Most of the survey (80 percent) would occur in deep water (>1,000 m), and 20 percent would occur in intermediate water (100–1,000 m deep); there would be no effort in shallow water <100 m deep.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP) would be operated from R/V *Sikuliaq* continuously during the seismic surveys, but not during transit to and from the survey area. Take of marine mammals is not expected to occur incidental to use of the MBES,

SBP, or ADCP because they will be operated only during seismic acquisition, and it is assumed that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, 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.

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. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>). Additional information may be found in the Aerial Survey of Arctic Marine Mammals (ASAMM) reports, which are available online at <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/aerial-surveys-arctic-marine-mammals>.

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as

described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For most species, stock abundance estimates are based on sightings within the U.S. EEZ, however for some species, this geographic area may extend beyond U.S. waters. Other species may use survey abundance estimates. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters. In this case, the proposed survey area outside of the U.S. EEZ does not necessarily overlap with the ranges for stocks managed by NMFS. However, we assume that individuals of these species that may be encountered during the survey would be part of those stocks. Additionally, six species listed in Table 1 indicate Unknown abundance estimates. This may be due to outdated data and population estimates or data is not representative of the entire stock.

All managed stocks in this region are assessed in NMFS's U.S. Alaska and Pacific SARs (e.g., Muto *et al.*, 2020, Carretta *et al.*, 2020). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 SARs (Muto *et al.*, 2020, Carretta *et al.*, 2020) and draft 2020 SARs (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

In addition, the Pacific walrus (*Odobenus rosmarus divergens*) and the Polar bear (*Ursus maritimus*) may be found in the Arctic. However, Pacific walruses and Polar bears are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

TABLE 1—MARINE MAMMALS EXPECTED TO OCCUR IN THE SURVEY AREA

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 Eschrichtiidae: Gray whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenidae: Bowhead whale	<i>Balaena mysticetus</i>	Western Arctic	E, D, Y	16,820 (0.052, 16,100, 2011)	161	56
Family Balaenopteridae (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Northeast Pacific ^{4*}	E, D, Y	Unknown	UND	0.6
Humpback whale	<i>Megaptera novaeangliae</i>	Western N Pacific [*]	E, D, Y	1,107 (0.3, 865, 2006)	3	2.8
Minke whale	<i>Balaenoptera acutorostrata</i> ..	Alaska ^{4*}	-, -, N	Unknown	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	<i>Delphinapterus leucas</i>	Beaufort Sea ⁴	-, -, N	39,258 (0.229, N/A, 1992) ...	UND	102
		Eastern Chukchi	-, -, N	13,305 (0.51, 8,875, 2017) ..	178	55
Killer whale	<i>Orcinus orca</i>	Alaska resident	-, -, N	2,347 c (N/A, 2347, 2012) ...	24	1
Narwhal	<i>Monodon Monoceros</i>	Unidentified ^{4*}	-, -, N	Unknown	UND	0
Family Phocoenidae (porpoises):						
Harbor Porpoise	<i>Phocoena phocoena</i>	Bering Sea ^{4*}	-, -, Y	Unknown	UND	0.4
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Bearded Seal	<i>Erignathus barbatus</i>	Beringia ^{4*}	T, D, Y	Unknown	UND	6,709
Ribbon Seal	<i>Histriophoca fasciata</i>	Unidentified [*]	-, -, N	184,687 (see SAR, 163,086, 2013).	9,785	163
Ringed Seal	<i>Pusa hispida</i>	Arctic	T, D, Y	Unknown	5,100	6,459
Spotted Seal	<i>Phoca largha</i>	Bering	-, -, N	461,625 (see SAR, 423,237, 2013).	25,394	5,254

^{*} Stocks marked with an asterisk are addressed in further detail in the text below.

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. In some cases, CV is not applicable. For most stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

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).

⁴ Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these present the best available information for use in this document.

As indicated above, all 13 species (with 14 managed stocks) in Table 1 could temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 4 of the IHA application.

Beluga whales and ringed seals are the marine mammal species most likely to be encountered during this survey, with bowhead whales and bearded seals also having a higher likelihood of co-occurring in the survey area over the other proposed species in Table 1. However, these four species (beluga whales, ringed seals, bowhead whales and bearded seals) are most common within 100 km of shore, whereas the proposed survey would occur no closer than 300 km from shore, with most effort further north. Thus, despite their

prevalence in Arctic waters north of Alaska, we expect there to be a low likelihood of encountering even beluga whales, ringed seals, bowhead whales and bearded seals during the proposed survey given the proposed activity's distance from shore.

Humpbacks, fin and minke whales have rarely been observed as far north in the Arctic Ocean as the planned survey location but have been spotted on rare occasions in areas coinciding with the lower latitudes of the proposed survey area during previous aerial surveys. Similar sightings during the proposed activity are expected to be limited during the proposed survey as the majority of the proposed survey area occurs in higher latitudes and outside typical migratory patterns for these species (Brueggeman, 2009; Haley *et al.* 2010; Clarke *et al.*, 2011; Schuck *et al.*, 2017). However, Brower *et al.* (2018)

suggest that sightings of these sub-Arctic species are increasing in the eastern Chukchi Sea as of recent years due to climate change. Killer whales, gray whales, humpback whales, fin whales, minke whales and harbor porpoises are minimally sighted in the Chukchi Sea based on ASAMM data and are primarily coastal species, however recent monitoring activities in the Chukchi and Beaufort seas during industry seismic surveys also suggests that some of these species may be increasing in numbers in the Arctic but are still expected to be south of the proposed survey area (Funk *et al.*, 2010). Additionally, there are scattered records of narwhal in Alaskan waters, where the species is considered to be extralimital. However, we do not expect the species to be encountered far north in the proposed survey area (Reeves *et al.*, 2002). Although we do not expect

the proposed survey area to coincide with expected ranges of the species described in this paragraph, takes equivalent to the average group size for the species are proposed for authorization at the applicant's request as a precaution due to the potential that they could be encountered.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*, 2015), NMFS delineated 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA.

Within Alaska waters, four humpback whale DPSs may occur: The Western North Pacific (WNP) DPS (endangered), Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). According to Wade (2017), in the Bering, Chukchi, and Beaufort Seas, encountered whales are most likely to be from the Hawaii DPS (86.8 percent), but could be from the Mexico DPS (11.0 percent) or WNP DPS (2.1 percent). Note that these probabilities reflect the upper limit of the 95 percent confidence interval of the probability of occurrence; therefore, numbers may not sum to 100 percent for a given area. Because this project occurs north of the Chukchi and Beaufort Sea and in the Arctic, we hypothesize that the Western North Pacific Stock of humpback whales will overlap with the proposed survey area, and thus include animals from the WNP DPS, Hawaii DPS and Mexico DPS as previously mentioned.

At this time, there is no comprehensive abundance estimate available in the SARs for the Alaska stock of minke whales. However, the International Whaling Commission (IWC) reports an abundance estimate of 20,000 minke whales in the North Pacific (North West Pacific and Okhotsk Sea) (2003), which is the figure used for analysis. This estimate encompasses the distribution of minke whales throughout the North Pacific extending to 80 degrees North. 20,000 is the most recent abundance estimate available for minke whales in the North Pacific provided by IWC. In 2017, the IWC Scientific Committee established a new group to review all abundance estimates and ensure quality and consistency across estimates used by IWC. According to the IWC website and the criteria established by this group, the 20,000 whale estimate in the North Pacific from 2003 is considered to be the 'best' estimate at this time.

Similarly, although a comprehensive abundance estimate is not available for the northeast Pacific stock of fin whales, provisional estimates representing portions of the range are available. The same 2010 survey of the eastern Bering sea shelf provided an estimate of 1,061 (CV = 0.38) fin whales (Friday *et al.* 2013). The estimate is not corrected for missed animals, but is expected to be robust as previous studies have shown that only small correction factors are needed for fin whales (Barlow, 1995). Zerbini *et al.* (2006) produced an estimate of 1,652 (95 percent Confidence Interval (CI): 1,142–2,389) fin whales for the area described above.

Narwhals are found year-round in the Arctic but rarely occur in the western Arctic, in areas including the Bering, Chukchi, and Beaufort Seas (COSEWIC, 2004). There are three populations of narwhals recognized internationally based on geographic separation, which include the Baffin Bay population, Hudson Bay population, and the East Greenland population. Currently, very little is known about these populations. The primary source for data and knowledge of narwhals in Alaska waters is local observations and traditional ecological knowledge dating back to the 1800s (Noogwook *et al.*, 2007). Individual sightings have occurred in Russian waters of the northern Chukchi Sea (Yablokov and Bel'kovich, 1968; Reeves and Tracey, 1980). Additionally, Alaska Native hunters recorded seven sightings of narwhals between 1989 and 2008, four of which consisted of mixed groups of narwhals and belugas (George and Suydam, unpublished manuscript). Records of narwhals in the Beaufort, Chukchi, and Bering Seas are hypothesized to be whales from the Baffin Bay population, migrating into the Canadian Arctic as ice conditions permit (COSEWIC, 2004). At this time, there are no reliable estimates of abundance for narwhals in Alaskan waters.

Based on previous industry-sponsored monitoring in the Beaufort Sea, harbor porpoises regularly occur in both the Chukchi and Beaufort Seas (Funk *et al.*, 2011). They have been sighted during several seismic surveys, both nearshore and offshore, between July and November (Funk *et al.*, 2010, 2011; Reiser *et al.*, 2011; Aerts *et al.*, 2013). After gray whales and bowhead whales, they are the most frequently sighted cetacean in the Chukchi Sea (Funk *et al.*, 2011; Reiser *et al.*, 2011). Shipboard visual line-transect surveys occurred biannually from 1999 to 2010, resulting in harbor porpoise abundance estimates for each survey. These surveys demonstrate the distribution of harbor

porpoises throughout the Chukchi and Beaufort Seas but are not reliable for estimating abundance estimates in this region.

Bearded seals are widely distributed throughout the summer and fall, following ice coverage northward, while juvenile seals remain near the coasts of the Bering and Chukchi Seas (Burns, 1967, 1981; Heptner *et al.*, 1976; Nelson, 1981; Cameron *et al.*, 2018). At this time, there is no reliable population estimate available for the entire Alaska stock of bearded seals. Recent aerial abundance surveys (Conn *et al.*, 2014) used a sub-sample of data collected in the U.S. portion of the Bering Sea to calculate a partial abundance estimate of 301,836 seals (95 percent CI: 238,195–371,147). Future studies plan to combine spring survey results of the Chukchi Sea and Beaufort Sea.

Similarly, ringed seals also lack a reliable population estimate for the entire stock. Conn *et al.* (2014) calculated an abundance estimate of 171,418 ringed seals (95 percent CI: 141,588–201,090) using a sub-sample of data collected from the U.S. portion of the Bering Sea in 2012. Researchers plan to combine these results with those from spring surveys of the Chukchi and Beaufort Seas once complete. During the summer months, ringed seals forage along ice edges or in open water areas of high productivity and have been observed in the northern Beaufort Sea during summer months (Harwood and Stirling, 1992; Freitas *et al.*, 2008; Kelly *et al.*, 2010b; Harwood *et al.*, 2015). This open water movement becomes limited with the onset of ice in the fall forcing the seals to move west and south as ice packs advance, dispersing the animals throughout the Chukchi and Bering Seas, with only a portion remaining in the Beaufort Sea (Frost and Lowry, 1984; Crawford *et al.*, 2012; Harwood *et al.*, 2012).

In addition to ringed and bearded seals, other pinniped species that could be encountered during the proposed survey include the ribbon seal and spotted seal. The ribbon seal is uncommon in the Chukchi Sea, and there are few sightings in the Beaufort Sea. From late March to early May, ribbon seals inhabit the Bering Sea ice front. They are most abundant in the northern part of the ice front in the central and western parts of the Bering Sea. As the ice recedes in May to mid-July, the seals move farther north in the Bering Sea, where they haul out on the receding ice edge and remnant ice. Spotted seals are more abundant in the Chukchi Sea and occur in small numbers in the Beaufort Sea. As the ice melts, seals become more concentrated,

with part of the Bering Sea population moving to the Bering Strait and the southern part of the Chukchi Sea. The distribution of spotted seals is seasonally related to specific life-history events that can be broadly divided into two periods: Late-fall through spring, when whelping, nursing, breeding, and molting occur in association with the presence of sea ice on which the seals haul out, and summer through fall when seasonal sea ice has melted and most spotted seals use land for hauling out. Satellite-tagging studies showed that seals tagged in the northeastern Chukchi Sea moved south in October and passed through the Bering Strait in November. Seals overwintered in the Bering Sea along the ice edge and made east-west movements along the edge. In summer and fall, spotted seals use coastal haul-out sites regularly and may be found as far north as 69–72° N in the Chukchi and Beaufort seas. Neither of these species would likely be encountered during the proposed activity other than perhaps during transit periods to or from the survey area. Although their encounters this far north in the Arctic are rare, authorization of take has been proposed at the request of the applicant. Clarke *et al.* (2015) described Biological Important Areas (BIAs) for cetaceans in the Arctic. BIAs were delineated for two baleen whale species, bowhead whales and gray whales, and one toothed whale, the beluga whale. The proposed UAGI survey areas do not coincide with any of the three Arctic BIAs.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as “a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.” For more information on UMEs, please visit: www.fisheries.noaa.gov/national/

marine-mammal-protection/marine-mammal-unusual-mortality-events. Currently recognized UMEs in Alaska involving species under NMFS’ jurisdiction include those affecting ice seals in the Bering and Chukchi Seas and gray whales. Since June 1, 2018, elevated strandings for bearded, ringed and spotted seals have occurred in the Bering and Chukchi seas in Alaska, with causes undetermined. Through 2020, there were 315 recorded seal strandings. For more information, please visit: www.fisheries.noaa.gov/alaska/marine-life-distress/2018-2020-ice-seal-unusual-mortality-event-alaska.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. As of April 5, 2021, there have been a total of 430 whales reported in the event, with approximately 205 dead whales in Mexico, 209 whales in the United States (including 93 in Alaska), and 16 whales in British Columbia, Canada. For the United States, the historical 18-year 5-month average (Jan–May) is 14.8 whales for this same time-period. Several dead whales have been emaciated with moderate to heavy whale lice (cyamid) loads. Necropsies have been conducted on a subset of whales with additional findings of vessel strike in three whales and entanglement in one whale. In Mexico, 50–55 percent of the free-ranging whales observed in the lagoons in winter have been reported as “skinny” compared to the annual average of 10–12 percent “skinny” whales normally seen. The cause of the UME is as yet undetermined. For more information, please visit: www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast-and.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS’ 2018 Revision to its *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Technical Guidance) (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, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	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. Thirteen marine mammal species (9 cetacean and 4 pinniped (all phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the cetacean species that may be present, 5 are classified as low-frequency cetaceans (*i.e.*, all mysticete species), 3 are classified as mid-frequency cetaceans (*i.e.*, all delphinid species), and 1 is classified as high-frequency cetacean (*i.e.*, harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary of the ways that UAGI's specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology and over a similar amount of time, and affecting similar species (*e.g.*, 83 FR 29212, June 22, 2018; 84 FR 14200, April 9, 2019; 85 FR 19580, April 7, 2020). No significant new information is available, and we refer the reader to these documents for additional detail. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by UAGI's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Active Acoustic Sound Sources and Acoustic Terminology

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to the discussion of the effects of the specified activity on marine mammals in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

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 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 decibel. 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 $\mu\text{Pa}^2\cdot\text{s}$) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.*, 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

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 sound produced by the pile driving activity 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, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of

biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. 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. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.*, Greene and Richardson, 1988).

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 intermittent (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. 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.

Summary on Specific Potential Effects of Acoustic Sound Sources

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), 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).

Animals in the vicinity of UAGI's proposed seismic survey activity are unlikely to incur PTS due to the small estimated auditory injury zones, in conjunction with the anticipated efficacy of the proposed mitigation requirements. Please see Estimated Take and Proposed Mitigation for further discussion.

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 sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality

habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, zooplankton) (*i.e.*, effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area relatively quickly, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. 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). 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 (Vanderlaan and Taggart, 2007).

Ship strikes generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity and which typically involves larger vessels moving at faster speeds. 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). Commercial fishing vessels were responsible for three percent of recorded collisions, while no such incidents were reported for geophysical survey vessels during that time period.

For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels (approximately 10 kn), the probability of serious injury or mortality resulting from a strike (if it occurred) is less than 50 percent (Vanderlaan and Taggart, 2007; Conn and Silber, 2013). However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. We anticipate that vessel collisions involving seismic data acquisition vessels towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speeds of vessels towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers, and the small number of seismic survey cruises relative to commercial ship traffic, we believe that the possibility of ship strike is discountable and, further, that 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 or proposed for authorization, and this potential effect

of the specified activity will not be discussed further in the following analysis.

The potential effects of UAGI's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

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, as use of seismic airguns may result, either directly or as a result of TTS, in disruption of behavioral patterns of marine mammals. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. Moreover, based on the nature of the activity and the anticipated effectiveness of the mitigation measures (i.e., implementation of extended shutdown distances for certain species)—discussed in detail below in the Proposed Mitigation section—Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these

basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed by varying degrees by other factors related to the source (e.g., frequency, predictability, duty cycle), the environment (e.g., bathymetry), the receiving animals (hearing, motivation, experience, demography, behavioral context), and the distance between the sound source and the animal, and can be difficult to predict (Southall et al., 2007; Ellison et al., 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (i.e., Level B harassment) when exposed to underwater anthropogenic noise above received levels 160 dB re 1 μ Pa (rms) for the impulsive sources (i.e., seismic airguns) evaluated here.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). UAGI's proposed seismic survey includes the use of impulsive sources (seismic airgun).

These thresholds are provided in Table 3 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 <https://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 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. 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 will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and acoustic propagation modeling.

The acoustic propagation modeling methodologies are described in greater detail in Appendix A of UAGI’s IHA application. The proposed survey would primarily acquire data using the 2-airgun array with a total discharge volume of 1,040 in³ and an approximately 15-second shot interval. During approximately 12 percent of the planned survey tracklines, the 6-airgun, 3,120 in³ array would be used with a 60-second shot interval. All tracklines would be surveyed with a maximum tow depth of 9 m. The modeling assumed an airgun firing pressure of 2,540 psi. Propagation modeling for UAGI’s application follows the approach used by the Lamont-Doherty Earth Observatory (L-DEO) for other, similar IHA applications. L-DEO 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). To validate the model results, L-DEO measured propagation of pulses from a 36-airgun array at a tow depth of 6 m in the Gulf of Mexico, for deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) (Tolstoy *et al.*, 2009; Diebold *et al.*, 2010).

L-DEO collected a MCS data set from R/V *Marcus G. Langseth* (with the same 36-airgun array referenced above) on an 8 km streamer in 2012 on the shelf of the Cascadia Margin off of Washington in water up to 200 m deep that allowed Crone *et al.* (2014) to analyze the hydrophone streamer (>1,100 individual shots). These empirical data were then analyzed to determine in situ sound levels for shallow and upper intermediate water depths. These data suggest that modeled radii were 2–3 times larger than the measured radii in shallow water. Similarly, data collected by Crone *et al.* (2017) during a survey off New Jersey in 2014 and 2015 confirmed that in situ measurements collected by R/V *Langseth* hydrophone streamer were 2–3 times smaller than the predicted radii.

L-DEO model results are used to determine the assumed radial distance to the 160-dB rms threshold for these arrays in deep water (>1,000 m) (down to a maximum water depth of 2,000 m) (see Table 4). Water depths in the project area may be up to 4,000 m, but marine mammals in the region are generally not anticipated to dive below 2,000 m (Costa and Williams, 1999). The radii for intermediate water depths (100–1000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5. No survey effort would occur in water depths <100 m.

The area expected to be ensonified was determined by entering the planned survey lines into a GIS and then “buffering” the lines by the applicable 160-dB distance (see Appendix B in IHA application). The resulting ensonified areas were then increased by 25% to allow for any necessary additional operations, such as re-surveying segments where data quality was insufficient. This approach assumes that no marine mammals would move away or toward the trackline in response to increasing sound levels before the levels reach the threshold as R/V *Sikuliaq* approaches.

TABLE 4—PREDICTED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Level B harassment zone (m)
6 airgun array; 3,120 in ³	9	>1,000	¹ 4,640
		100–1,000	³ 6,960
2 airgun array; 1,040 in ³	9	>1,000	¹ 1,604
		100–1,000	² 2,406

¹ Distance based on L-DEO model results.

² Based on L-DEO model results with 1.5x correction factor applied.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on L-DEO modeling performed using the NUCLEUS source modeling 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 2018). 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 values for SEL_{cum} and peak SPL were derived from calculating the modified far-field 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 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, when the source is an array of multiple airguns separated in space, the

source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (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 modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. The acoustic modeling methodology as used for estimating Level B harassment distances with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays, which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data (modeled in 1 Hz bands) were used to make adjustments (dB) to

the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (i.e., to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's "safe distance" methodology for mobile sources (described by Sivle *et al.*, 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to the planned survey, potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds. For full detail of the modeling methodology used for estimating distance to Level A harassment peak pressure and cumulative SEL criteria, please see Appendix A of UAGI's application.

Inputs to the User Spreadsheets in the form of estimated source levels are shown in Appendix A of UAGI's application. User Spreadsheets used by UAGI to estimate distances to Level A harassment isopleths for the airgun arrays are also provided in Appendix A of the application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the survey are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (i.e., metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Source (volume)	Threshold	Level A harassment zone (m)			
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids
6-airgun array (3,120 in ³)	SEL _{cum}	51	0	0	0
	Peak	30	7	212	34
2-airgun array (1,040 in ³)	SEL _{cum}	17	0	0	0
	Peak	10	3	73	2

Note that because of some of the assumptions included in the methods used (e.g., stationary receiver with no vertical or horizontal movement in response to the acoustic source), isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available. NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the proposed seismic survey, the User

Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Auditory injury is unlikely to occur for mid-frequency and low-frequency cetaceans given very small modeled zones of injury for those species (all estimated zones less than 10 m for mid-frequency cetaceans, up to a maximum of 51 m for low-frequency cetaceans and 34 m for phocid pinnipeds), in context of distributed source dynamics. Similarly, for high-frequency cetaceans, the maximum modeled injury zone for the low-energy array (88 percent of survey effort) is 73 m and auditory injury would be unlikely to occur during use of that array. 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 estimated Level A harassment isopleth distances would in all cases (other than for high-frequency cetaceans) 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 relevant harassment criteria would not necessarily exist.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of low- and mid-frequency cetaceans and phocid pinnipeds 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. A similar conclusion may be drawn for high-frequency cetaceans relative to use of the low-energy airgun array. We do not believe that Level A harassment is a likely outcome for any low- or mid-frequency cetacean or

phocid pinniped and do not propose to authorize any Level A harassment for these species. For high-frequency cetaceans, the larger estimated Level A harassment zone associated with the high-energy array would be present for only 12 percent of total survey effort, and given the expected rarity of occurrence for harbor porpoise, no incidents of Level A harassment are expected.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Density values are shown in Table 6.

Cetacean densities in the U.S. Arctic were published by Schick *et al.* (2017). This study used line-transect aerial survey data from ASAMM collected in the U.S. Chukchi and Beaufort seas from 2000–2016 and associated habitat covariates to estimate abundance monthly within 10 km x 10 km grid cells (equivalent to a density in units of individuals/100km²). Estimates were produced for bowhead, gray, and beluga whales, as well as other baleen whales such as fin, humpback, and minke whales. The spatial extent of the model predictions differed by species, but for all species other than bowhead whale and beluga whale was further south than the planned location of the UAGI survey. In general, marine mammals are expected to be encountered more frequently to the south of the proposed survey location. Therefore, estimated take numbers produced through use of the density model products are expected to be a very conservative estimate. Previous monitoring reports from recent Arctic surveys using the same research vessel saw a total of three humpback whales, 1 spotted seal, 4 unknown seals (Please see the following link for more detailed information on this monitoring report: https://media.fisheries.noaa.gov/dam-migration/onr_arcticresearch_2018iha_monrep_opr1.pdf). Furthermore, based on tagged surveys from the summer and fall, bowhead whales migrate across the continental shelf of Alaska in the Beaufort Sea to the central Chukchi Sea in September and remain in this area for the fall (Quakenbush, Small & Citta, 2013). Only one whale was reported to travel north towards the proposed survey area. With this information in mind, NMFS believes that the proposed take numbers conservatively estimate the number of bowhead whales that will be encountered during the proposed activity.

For all species, except for beluga whales, UAGI extended the Schick *et al.*

(2017) density values to calculate predictions for areas farther north. The spatial coverage of density estimates for bowhead whales extends northward to ~74 °N, which overlaps with the southern-most survey lines by ~25 km. However, the majority of the survey lines do not overlap with spatial coverage of the Schick *et al.* (2017) density estimates, so the following method was used to produce a conservative estimate of average bowhead density farther north. The two northern-most rows of 10km x 10km grid cells (*ie.*, northern 20 km of estimates) and the two additional cells overlapped by the southern-most survey lines were selected from the bowhead whale GIS raster files for August and September between 140°W and 165°W, the approximate east-west extent of the survey lines. Density estimates within those cells were then evaluated and cells east of ~157°W were excluded as they contained densities that were effectively zero which would reduce the calculated average. The mean of the remaining cells (west of 157°W) was then calculated.

The same process was used to calculate densities for gray whales, fin whales, humpback whales, and minke whales. However the northern survey coverage from Schick *et al.* (2017) for these species extends only to ~73°N. This meant that there was no overlap with any of the survey lines and no additional cells beyond the two northernmost rows (20km) were used in the calculations. The resulting density estimates were extremely small.

For beluga whales, the spatial coverage of the Schick *et al.* (2017) density estimates overlapped the full extent of the survey lines and associated ensonified areas. To calculate an average beluga whale density in areas that may be exposed above threshold levels, UAGI selected all grid cells from the August and September estimates that overlapped (wholly or partially) with estimated the 160 dB ensonified area around the planned tracklines and calculated the mean.

During ASAMM, sightings of pinnipeds were recorded when possible and the resulting data were used by Schick *et al.* (2017) to produce habitat-based estimates in the same manner as cetaceans. However, given ASAMM was designed for large whales, including typically being flown at altitudes above 304.8 feet (ft) ASL, and small pinniped sightings may not have been recorded as consistently, the Schick *et al.* (2017) pinniped densities were not used in this analysis. Instead, bearded and ringed seal densities from NMFS's Biological Opinion for the Navy's Arctic Research

Activities 2018–2021 were used (NMFS 2019b), which were based on habitat-based modeling by Kaschner *et al.* (2006) and Kaschner (2004).

Spotted and ribbon seals were not included in NMFS (2019b). Thus, spotted seal densities were estimated by multiplying the ringed seal density by the ratio of the estimated Chukchi Sea populations of the two species. The best estimate of the Alaskan population of spotted seals is 461,625 (Muto *et al.*, 2020), and ~8% of the population (~37,000) is estimated to be present in the Chukchi Sea during the summer and fall (Rugh *et al.*, 1997). As the best estimate of the population of ringed seals in the Alaskan Chukchi Sea is ~208,000 animals (Bengtson *et al.*, 2005), this resulted in a ratio of 0.18. Based on Hartin *et al.*, (2013), four ribbon seal sightings were reported during vessel operations in the Chukchi Sea from 2006 through 2010, resulting in a density estimate of 0.0007/km².

Highly variable oceanographic and atmospheric conditions determine the distribution of sea ice in the Arctic, which heavily influences the species and number of marine mammals potentially present at these high latitudes. Thus, there is considerable year-to-year variation in the distribution and abundance of the marine mammal species in the survey area. For some species, the densities derived from past surveys may not be representative of the densities that would be encountered during the proposed seismic surveys. However, the approach used here is based on the best available data.

TABLE 6—DENSITY VALUES USED FOR TAKE ANALYSIS, CALCULATED BY UAGI

Species	Density (individuals/km ²)
Bowhead whale	0.0124.
Gray whale	0.
Fin whale	0.
Humpback whale	0.
Minke whale	0.
Beluga whale	0.0255.
Killer whale	Unknown.
Narwhal	Unknown.
Harbor porpoise	Unknown.
Bearded seal	0.0332.
Ribbon seal	0.0677.
Ringed seal	0.376.
Spotted seal	0.0007.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths 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 Level A and Level B harassment thresholds. The distance for the 160-dB threshold (based on L-DEO model results) was used to draw a buffer around every transect line in GIS to

determine the total ensonified area in each depth category. Estimated incidents of exposure above Level A and Level B harassment criteria are presented in Table 7. As noted previously, UAGI has added 25 percent in the form of operational days, which is equivalent to adding 25 percent to the proposed line-kilometers to be surveyed. This accounts for the possibility that additional operational days are required, and is included in the estimates of actual exposures.

The number of individual marine mammals potentially exposed to airgun sounds with received levels ≥ 160 dB re 1 $\mu\text{Pa}_{\text{rms}}$ (Level B) was estimated following NSF's take calculation method by multiplying the estimated densities by the total area expected to be ensonified above the Level threshold. The total ensonified area was multiplied by 25 percent to account for any necessary additional operations, such as re-surveying segments where data quality was insufficient. This approach assumes that no marine mammals would move away or toward the trackline in response to increasing sound levels before the levels reach the threshold as R/V *Sikuliaq* approaches. This value was then multiplied by the estimated densities for each species to produce estimated Level B takes. Given the location of the survey being far north in the Arctic, we expect that the density values, and thus estimated take numbers, are conservative estimates of what is likely to be encountered during the survey.

TABLE 7—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION

Species	Stock ¹	Estimated Level B harassment	Estimated Level A harassment	Proposed Level B harassment	Proposed Level A harassment	Total take	Percent of stock ¹
Bowhead whale	Western Arctic	339	3	342	0	342	2.03
Humpback whale ²	WN Pacific	0	0	2	0	2	0.00
Fin whale ^{2,4}	NE Pacific	0	0	2	0	2	0.00
Gray whale ²	EN Pacific	0	0	2	0	2	0.00
Minke whale ^{2,4}	Alaska	0	0	2	0	2	0.00
Beluga whale	Beaufort Sea	696	7	703	0	703	1.34
	Eastern Chukchi.						
Killer whale ²	Alaska Resident ...	0	0	6	0	6	0.00
Narwhal ^{3,4}	Unidentified	0	0	2	0	2	n/a
Harbor porpoise ^{2,4}	Bering Sea	0	0	2	0	2	0.00
Bearded seal	Beringia	907	9	916	0	916	0.73
Ringed seal	Arctic	10,268	105	10,373	0	10,373	6.05
Spotted seal	Bering	19	0	19	0	19	0.00
Ribbon seal	Unidentified	1849	19	1868	0	1868	1.01

¹ In most cases, where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all proposed takes occurred within each stock. Where necessary, additional discussion is provided in the "Small Numbers Analysis" section.

² UAGI requests authorization of gray whale, humpback whale, fin whale, minke whale, killer whale, and harbor porpoise take equivalent to exposure of one group (Clarke *et al.*, 2016; Clarke *et al.*, 2017; Clarke *et al.*, 2018; Clarke *et al.*, 2019).

³ UAGI requests authorization of two takes of narwhals.

⁴ As noted in Table 1, there is no estimate of abundance available for these species. See "Small Numbers Analysis" section for further discussion.

Although, gray whales, fin whales, humpback whales, minke whales, narwhals and harbor porpoises are not expected to occur this far north in the Arctic, we agree with NSF that there is possibility that the proposed activity might encounter these species and thus a conservative number of takes based on average group size from yearly Aerial Surveys of Arctic Marine Mammals (ASAMM) (Clark *et al.*, 2016, 2017, 2018, 2019) has been proposed.

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. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, 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.

In order to satisfy the MMPA's least practicable adverse impact standard, NMFS has evaluated a suite of basic mitigation protocols for seismic surveys that are required regardless of the status of a stock. Additional or enhanced

protections may be required for species whose stocks are in particularly poor health and/or are subject to some significant additional stressor that lessens that stock's ability to weather the effects of the specified activities without worsening its status. We reviewed seismic mitigation protocols required or recommended elsewhere (*e.g.*, HESS, 1999; DOC, 2013; IBAMA, 2018; Kyhn *et al.*, 2011; JNCC, 2017; DEWHA, 2008; BOEM, 2016; DFO, 2008; GHFS, 2015; MMOA, 2016; Nowacek *et al.*, 2013; Nowacek and Southall, 2016), recommendations received during public comment periods for previous actions, and the available scientific literature. We also considered recommendations given in a number of review articles (*e.g.*, Weir and Dolman, 2007; Compton *et al.*, 2008; Parsons *et al.*, 2009; Wright and Cosentino, 2015; Stone, 2015b). This exhaustive review and consideration of public comments regarding previous, similar activities has led to development of the protocols included here.

Due to the use of high- and low-energy airgun arrays used within this survey, two separate mitigation protocols are proposed for use throughout the activity depending on which array is in use (Table 8).

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual Protected Species Observers (PSOs)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the EZ, within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone. The buffer zone means an area beyond the EZ to be monitored for the presence of marine mammals that may enter the EZ. During pre-clearance monitoring (*i.e.*, before ramp-up begins), the buffer zone also acts as an extension of the EZ in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.*, ramp-up). The standard EZ is 500 m from the edges of the airgun array for high energy surveys and 100 m for low energy surveys. For high energy surveys, the buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m EZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). For low energy surveys, the buffer zone encompasses the area at and below the sea surface from the edge of the 0–100 m EZ, out to a radius of 200 m from the edges of the airgun array (100–200 m).

Visual monitoring of the EZ and buffer zones 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 naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the EZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the EZ.

UAGI 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 PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in the roles, 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 EZ and buffer zone must begin no less than 30 minutes prior to ramp-up and 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 EZ and buffer zone. 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 EZ) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source.

During use of the airgun (*i.e.*, anytime the acoustic source is active, including ramp-up), detections of marine mammals within the buffer zone (but outside the EZ) should 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 four 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.

Establishment of Exclusion and Buffer Zones

An EZ 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 behavioral patterns. The PSOs would establish a minimum EZ with a 500- or 100-m radius, during use of the high energy and low energy arrays, respectively, for all species except bowhead whales. The EZ 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).

The EZs are intended to be precautionary in the sense that they 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, the EZs are 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 these distances are likely regularly attainable for PSOs using the naked eye during typical conditions.

An extended EZ of 1,500/500 m must be implemented for all bowhead whales during high energy and low energy survey effort, respectively, because of their importance to subsistence hunters and protected status. No buffer of this extended EZ is required.

Pre-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 for high energy airgun arrays. Ramp-up for the low energy array, which includes only two elements, may be shorter. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.*, the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic 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-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 EZ and buffer zone for 30 minutes prior to the initiation of ramp-up (pre-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-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 EZ or buffer zone. If a marine mammal is observed within the applicable EZ or the buffer zone during the 30 minute pre-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 pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including large delphinids, such as beluga whales and killer 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 for high energy arrays. The operator must provide information to the PSO documenting that appropriate procedures were followed;

- PSOs must monitor the relevant EZ and buffer zone during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable EZ. 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 EZ. For any longer shutdown, pre-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-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-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 EZ. 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 the airgun array is active (*i.e.*, anytime one or more airguns is active, including during ramp-up) and a marine mammal appears within or enters the applicable EZ, 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.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the EZ. The animal would be considered to have cleared the EZ if it is visually observed to have departed the EZ, or it has not been seen within the EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including beluga whales and killer whales.

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable EZ (*i.e.*, animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and pinnipeds, and 30 minutes for mysticetes and all other odontocetes, including beluga whales and killer whales, with no further observation of the marine mammal(s).

UAGI 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 of the following are observed at any distance:

- Any large whale (defined as 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.

Passive Acoustic Monitoring (PAM)

NMFS does not propose to require use of PAM for this activity. NMFS typically recommends use of PAM as part of prescribed mitigation requirements for high energy surveys, but not for low energy surveys, which here comprise approximately 88 percent of the planned survey. Therefore, PAM would only be applicable to the small portion of the proposed survey (12 percent) using the high-energy array. In addition, use of towed PAM is not generally expected to be effective in detecting mysticetes, due to overlap in the frequencies of mysticete vocalizations with the noise from the airgun array as well as from the vessel itself and flow noise around the towed PAM receiver. Species of greatest interest in prescribing use of towed PAM (*e.g.*, sperm whales, beaked whales) are not present in the planned survey area. Further, UAGI has indicated that it would not be practicable to carry the additional monitoring personnel required for implementation of towed PAM. The R/V *Sikuliaq* is a smaller research vessel with limited space.

TABLE 8—PROPOSED MITIGATION PROTOCOLS FOR HIGH- AND LOW-ENERGY ARRAYS

Mitigation Protocols		
Sources	High Energy (6-airgun array with 3120 in ³ total discharge volume).	Low Energy (2-airgun array with 1040 in ³ total discharge volume).
Visual PSOs	Minimum of 2 NMFS-approved PSOs on duty during daylight hours (30 minutes before sunrise through 30 minutes after sunset); Limit of 2 consecutive hours on watch followed by a break of at least 1 hour; Maximum of 12 hours on watch per 24-hour period.	Minimum of 2 NMFS-approved PSOs on duty during daylight hours (30 minutes before sunrise through 30 minutes after sunset); Limit of 2 consecutive hours on watch followed by a break of at least 1 hour; Maximum of 12 hours on watch per 24-hour period.
Passive acoustic monitoring	Not Required	Not required.
Exclusion zones	• 500 m (all marine mammals) • 1,500 m (Bowhead whales)	• 100 m (all marine mammals). • 500 m (Bowhead whales).
Pre-start clearance	Required; 30-minute clearance period of the following zones: • 1,000 m (all marine mammals) • 1,500 m (Bowhead whales) Following detection within zone, animal must be observed exiting or additional period of 15 or 30 minutes.	Required; 30-minute clearance period of the following zones: • 200 m (all marine mammals). • 500 m (Bowhead whales). Following detection within zone, animal must be observed exiting or additional period of 15 or 30 minutes.
Ramp-up	Required; duration ≥20 minutes	Required; duration not more than 20 minutes.
Shutdown	Shutdown required for marine mammal detected within defined EZs; Re-start allowed following clearance period of 15 or 30 minutes.	Shutdown required for marine mammal detected within defined EZs; Re-start allowed following clearance period of 15 or 30 minutes

Vessel Strike Avoidance

1. Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as

appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone 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 identify a marine mammal as a bowhead whale, other whale (defined in this context as baleen whales other than bowhead whales), or other marine mammal.

2. Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 500 m from bowhead whales. If a whale is observed but cannot be confirmed as a species other than a bowhead whale, the vessel operator must assume that it is a bowhead whale and take appropriate action.

4. All vessels must maintain a minimum separation distance of 100 m from all other baleen whales.

5. 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).

6. 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 protected species 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.

7. 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.

We did not identify any mitigation specifically appropriate for habitat. Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project 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. The specified activity is of relatively short duration (30 days) and the disturbance will be temporary in nature, similar habitat and

resources are available 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. No BIAs, designated critical habitat, or other habitat of known significance would be impacted by the planned activities.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, as well as other measures considered by NMFS described above, NMFS has preliminarily determined that the 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, and on the availability of such species or stock for subsistence uses (see Unmitigable Adverse Impact Analysis and Determination).

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 in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient

noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. During seismic operations, at least five visual PSOs would be based aboard the R/V *Sikuliaq*. 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 x 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, 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;

- 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;

- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;

- 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 one 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. Traditional ecological knowledge is also a relevant consideration.

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-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.

Reporting

A report would be submitted to NMFS within 90 days after the end of the cruise. 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 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. The report must summarize the data collected as described above and in the IHA. A final report must be submitted within 30 days following resolution of any comments on the draft report.

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 UAGI shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS Alaska 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, UAGI shall report the incident to OPR, NMFS and to the NMFS Alaska 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).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 1, given that NMFS expects the anticipated effects of the planned geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that injury, serious injury or mortality would occur as a result of UAGI's planned survey, even in the absence of mitigation, and none would be authorized. Similarly, non-auditory physical effects, stranding, and vessel strike are not expected to

occur. Although a few incidents of Level A harassment were predicted through the quantitative exposure estimation process (see Estimated Take), NMFS has determined that this is not a realistic result due to the small estimated Level A harassment zones for the species (no greater than approximately 50 m) and the proposed mitigation requirements, and no Level A harassment is proposed for authorization. These estimated zones are larger than what would realistically occur, as discussed in the Estimated Take section. Although no Level A harassment would be expected to occur even absent mitigation, the extended distance exclusion zones proposed for bowhead whales further strengthen this conclusion.

We expect that 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). The proposed number of takes for bowhead whales is 2 percent of the population. We expect this number to be even smaller as the likelihood of encountering these animals in deep waters in the Northern Arctic Ocean are slim based on recent telemetry data (Quakenbush, Small & Citta, 2013).

Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project 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 relatively short duration (30 days) and temporary nature of the disturbance, 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. No BIAs, designated critical habitat, or other habitat of known significance would be impacted by the planned activities.

Negligible Impact Conclusions

The proposed survey would be of short duration (30 days of seismic operations), and the acoustic "footprint" of the proposed survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in

the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area. Short term exposures to survey operations are expected to only temporarily affect marine mammal behavior in the form of avoidance, and the potential for longer-term avoidance of important areas is limited. Short term exposures to survey operations are not likely to impact marine mammal behavior, and the potential for longer-term avoidance of important areas is limited.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array.

NMFS concludes that exposures to marine mammal species and stocks due to UAGI's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed, over relatively small areas of the affected animals' ranges. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

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 the species or stock through effects on annual rates of recruitment or survival:

- No Level A harassment, serious injury or mortality is anticipated or proposed to be authorized;
- The proposed activity is temporary and of relatively short duration (30 days);
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes in the form of avoidance of the area around the survey vessel;
- Location of the survey is further north in the Arctic Ocean and away from areas where most of the species listed in Table 1 have been observed and is north of summer feeding areas and migratory routes.
- The availability of alternate 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;

- 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; and

- The proposed mitigation measures, including visual monitoring, shutdowns, ramp-up, and prescribed measures based on energy size 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 above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether the take 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 (see 86 **Federal Register** 5322, 5439 (January 19, 2021)). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

There are several stocks for which there is no currently accepted stock abundance estimate. These include the fin whale, minke whale, narwhal, bearded seal, and ringed seal. In those cases, qualitative factors are used to inform an assessment of whether the likely number of individual marine mammals taken is appropriately considered small. We discuss these in further detail below.

For all other stocks (aside from those without accepted abundance estimates), the proposed take is less than 7% of the best available stock abundance, well less than the one-third threshold for exceeding small numbers (and some of those takes may be repeats of the same individual, thus rendering the actual

percentage even lower). We also acknowledge that, given the location of the planned survey activity high in the Arctic Ocean, the stock ranges referenced in the SARs do not always fully overlap the area of the planned survey activity. However, given the very small percentage of the best available stock abundance estimates for these species and the likelihood that the numbers of take proposed for authorization would be very small relative to any reasonable population abundance estimate, we conclude these numbers are small.

The stock abundance estimates for fin whale, minke whale, narwhal, bearded seal and ringed seal stocks that occur in the surveys area are unknown, according to the latest SARs. Therefore, we reviewed other scientific information in making our small numbers determinations for these animals. The abundance estimate of 20,000 minke whales was taken from the Northwest Pacific and Okhotsk Sea (IWC 2021). In addition, as noted previously, partial abundance estimates of 1,233 and 2,020 minke whales are available for shelf and nearshore waters between the Kenai Peninsula and Amchitka Pass and for the eastern Bering Sea shelf, respectively. For the minke whale, these partial abundance estimates alone are sufficient to demonstrate that the proposed take number of 2 is of small numbers. The same surveys produced partial abundance estimates of 1,652 and 1,061 fin whales, for the same areas, respectively, which are similarly sufficient to demonstrate that the proposed take number of 2 is small numbers. The bearded seal estimate of 125,000 was estimated for the U.S. portion of the Bering Sea (Boveng *et al.*, 2017) and 155,000 bearded seals for the entire Alaska stock (Cameron *et al.*, 2010). These partial abundance estimates near the proposed survey are sufficient to demonstrate that the proposed take number of 916 seals is small numbers. Similarly, the ringed seal abundance estimate of 171,418 ringed seals was based on a limited subsample from the Bering Sea (Conn *et al.*, 2014 in Muto *et al.*, 2020). This minimal abundance estimate for the Alaska region is enough to demonstrate that a take of 10,373 will be small numbers at 6.05% of the Bering Sea population. There is no abundance information available for narwhals. However, the take number is sufficiently small (2) that we assume that it is small relative to any reasonable assumption of likely population abundance for the narwhal. Additionally, the proposed survey area

encompasses a very small portion of the hypothesized range of the species.

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 will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an “unmitigable adverse impact” on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The coast and nearshore waters of Alaska are of cultural importance to indigenous peoples for fishing, hunting, gathering, and ceremonial purposes. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. There are seven communities in the North Slope Borough region of Alaska (northwestern and northern Alaska) that harvest seals, including from west to east Point Hope, Point Lay, Wainwright, Utqiagvik, Atkasut, Nuiqsut, and Kaktovik (Ice Seal Committee 2019). Bearded seals are the preferred species to harvest as food and for skin boat coverings, but ringed seals are also commonly taken for food and their blubber (Ice Seal Committee 2019). Ringed seals are typically harvested during the summer and can extend up to 64 km from shore (Stephen R. Braund & Associates 2010). No ribbon seals have been harvested in any of the North Slope Borough communities since the 1960s (Ice Seal Committee 2019). However, the number of seals harvested each year varies considerably.

A subsistence harvest of bowheads and belugas is also practiced by Alaskan Natives, providing nutritional and cultural needs. In 2019, 36 bowhead whales were taken during the Alaskan subsistence hunt (Suydam *et al.*, 2020). Whaling near Utqiagvik occurs during

spring (April and May) and autumn, and can continue into November, depending on the quota and conditions.

Communities that harvested bowheads during 2019 include Utqiagvik, Gamgell, Kaktovik, Nuiqsut, Point Hope, Point Lay, and Wainwright. Bowhead whales and gray whales are also taken in the aboriginal subsistence hunt in the Russian Federation (Zharikov *et al.*, 2020). During 2019, 135 gray whales and one bowhead whale were harvested at Chukotka.

Beluga whales from the eastern Chukchi Sea stock are an important subsistence resource for residents of the village of Point Lay, adjacent to Kasegaluk Lagoon, and other villages in northwest Alaska. Each year, hunters from Point Lay drive belugas into the lagoon to a traditional hunting location. The belugas have been predictably sighted near the lagoon from late June through mid to late July (Suydam *et al.*, 2001). The mean annual number of Beaufort Sea belugas landed by Alaska Native subsistence hunters in 2011–2015 was 47, and an average of 92 were taken in Canadian waters; the mean annual number of Eastern Chukchi Sea belugas landed by Alaska Native subsistence hunters in 2011–2015 was 67 (Muto *et al.*, 2020).

The proposed survey by UAGI will occur within ~73.5–81.0 °N, ~139.5–168 °W and over 300 km from the Alaska coastline. Due to the location of the survey being far north in the Arctic and over 200 kilometers from any hunting area or buffer (<http://www.north-slope.org/assets/images/uploads/bowhead%20migration%20map%2021mar03%20distribution.pdf>), no impacts on the availability of marine mammals for subsistence uses are expected to occur. Specifically, based on the survey methods and location proposed, there is no reason to believe that there will be any behavioral disturbance of bowhead whales that would also impact their behavior in a manner that would interfere with subsistence use later. Although fishing/hunting would not be precluded in the survey area, a safe distance would need to be kept from R/V *Sikuliaq* and the towed seismic equipment. The principal investigator for the survey has presented the proposed action to the Alaska Eskimo Whaling Commission (AEWC) at the July 2020, October 2020, and February 2021 Triannual Meetings. As specifically noted, during the meetings, daily email communications with interested community members would be made from the vessel. Communication may include notice of any unusual marine mammal

observations during the survey. Any potential space use conflicts would be further avoided through direct communication with subsistence fishers/hunters during the surveys. Considering the limited time that the planned seismic surveys would take place and the far offshore location of the surveys, no direct interaction with subsistence fishers/hunters would be anticipated. However, UAGI will still be required to remain in constant communication with subsistence fishers/hunters during the surveys.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from UAGI's proposed activities.

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.

NMFS is proposing to authorize take of bowhead whales, fin whales, bearded seals and ringed seals, which are listed under the ESA.

OPR Permits and Conservation Division has requested initiation of Section 7 consultation with the OPR Endangered Species Act 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 UAGI for conducting geophysical surveys in the Arctic in August and September, 2021, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

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 geophysical surveys. We also request at this time 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, or nearly identical, activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: May 25, 2021.

Catherine Marzin,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2021-11339 Filed 5-27-21; 8:45 am]

BILLING CODE 3510-22-P

**COMMITTEE FOR PURCHASE FROM
PEOPLE WHO ARE BLIND OR
SEVERELY DISABLED**

**Procurement List; Proposed Additions
and Deletions**

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete products previously furnished by such agencies.

DATES: Comments must be received on or before: June 27, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) and service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):

6540-00-NIB-0079—Lens Cleaning Station, Disposable, 16 Oz. Spray Bottle Cleaner

6540-00-NIB-0080—Lens Cleaning Station, Disposable, 8 Oz. Spray Bottle Cleaner

Designated Source of Supply: Chicago

Lighthouse Industries, Chicago, IL
Mandatory For: Total Government Requirement
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
Distribution: A-List

Service(s)

Service Type: Facility Management

Mandatory for: US Air Force, Airmen-In-Training Dormitories, Sheppard Air Force Base, TX

Designated Source of Supply: Work Services Corporation, Wichita Falls, TX

Contracting Activity: DEPT OF THE AIR FORCE, FA3020 82 CONS LGC

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 8010-01-363-3375—Enamel, Aerosol, Type I, Flat Gray—36081, Pint, BX/12

Designated Source of Supply: The Lighthouse for the Blind, St. Louis, MO

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Deputy Director, Business Operations.

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BILLING CODE 6353-01-P

**COMMITTEE FOR PURCHASE FROM
PEOPLE WHO ARE BLIND OR
SEVERELY DISABLED**

**Procurement List; Additions and
Deletions**

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action deletes products from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* June 27, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On 4/23/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is

published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

5340–01–107–3382—Strap, Webbing, 30" x 1"

5340–01–190–2472—Strap, Webbing, 254" x 1"

Designated Source of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL

Contracting Activity: DLA Troop Support, Philadelphia, PA

NSN(s)—Product Name(s):

6520–00–935–1007—Floss, Dental, Extra Fine, 100 yards, White

6520–01–063–6875—Floss, Dental, Unwaxed, 200 Yards, White

Contracting Activity: DLA Troop Support, Philadelphia, PA

NSN(s)—Product Name(s):

7530–00–244–4035—Paper, Carbon, Typewriter, 8½" x 11"

Designated Source of Supply: East Texas Lighthouse for the Blind, Tyler, TX

Contracting Activity: GSA/FAS Admin SVCS Acquisition BR(2, New York, NY

NSN(s)—Product Name(s):

7520–01–511–7935—Highlighter, Dry-Lighter, Yellow

7520–01–451–9179—Pen, Ballpoint, Retractable, Essential LVX, Black, Fine Point

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: GSA/FAS Admin SVCS Acquisition BR(2, New York, NY

NSN(s)—Product Name(s):

MR 13100—Baking Value Pack
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):

7520–01–658–0096—Pen, Gel, Stick, Erasable, Blue Gel Ink, .5mm

Designated Source of Supply: West Texas

Lighthouse for the Blind, San Angelo, TX

Contracting Activity: GSA/FAS Admin SVCS Acquisition BR(2, New York, NY

NSN(s)—Product Name(s):

7530–01–600–2014—Notebook, Spiral Bound, Biobased Bagasse Paper, 8½" x 11", 200 sheets, College Rule, White

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: GSA/FAS Admin SVCS Acquisition BR(2, New York, NY

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2021–11310 Filed 5–27–21; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, June 2, 2021; 9:00 a.m.–12:00 p.m.

PLACE: Due to the COVID–19 Pandemic, the meeting will be held remotely.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Decisional Matters: Accreditation of the Laboratory of Guangsheng M&P Manufacturing Co. Ltd. Conformity Assessment Body as a “Firewalled” Third Party Laboratory and Related Delegation of Authority; and

Final Rule: Safety Standard for Infant Sleep Products

All attendees should register for the Webinar. To register for the Webinar, please visit <https://attendee.gotowebinar.com/register/1135239573826588688> and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar.

CONTACT PERSON FOR MORE INFORMATION: Alberta Mills, Office of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–6833 (Office) or (240) 863–8938 (Cell).

Dated: May 25, 2021.
Alberta E. Mills,
Commission Secretary.
[FR Doc. 2021–11418 Filed 5–26–21; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2021–OS–0021]

Proposed Collection; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense (Personnel and Readiness) (OUSD (P&R)) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 27, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Ms. Angela Duncan at the Department of Defense,

Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09-09, Alexandria, VA 22350-3100 or call 571-372-7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: 2021 Active Duty Spouse Survey, OMB Control Number 0704-0604.

Needs and Uses: The DoD Survey of Active Duty Spouse Survey (ADSS) is the primary source for reliable and generalizable data on the effects of military life on military spouses and their families and the effectiveness of current programs and policies related to military families. The survey is designed to enhance understanding of how spouse and family resilience impact force readiness and retention and is also an indicator informing the effectiveness of programs and policies under the purview of DoD's Military Community and Family Policy (MC&FP) Department. Without this biennial survey, DoD would not have current data to guide limited resources to the appropriate programs, policies, and services related to military spouses, their families and ultimately Service members.

This survey provides an opportunity for military spouses to directly expand policy maker's knowledge by sharing opinions on issues that directly affect them. Success of current efforts and shortfalls in programs and policies are identified through this biennial survey. These survey results ensure decisions based on current and statistically reliable data.

The legislation authorizing the USD(P&R) to conduct these surveys is provided under 10 United States Code (U.S.C.), Sections 136, 1782 and 2358, and 37 U.S.C., Section 1008(b).

Affected Public: Individuals or households.

Annual Burden Hours: 18,175.

Number of Respondents: 72,700.

Responses per Respondent: 1.

Annual Responses: 72,700.

Average Burden per Response: 15 minutes.

Frequency: One time.

The Office of People Analytics (OPA) will administer the 2021 Active Duty Spouse Survey (ADSS) to active duty spouses of Army, Navy, Marine Corps, and Air Force members who are below flag rank. Active duty spouses will receive one of two versions of the ADSS, either a four-question supplemental ADSS or a full ADSS with 74 questions. Only spouses selected as part of the random sample will be asked to complete the full ADSS. The full ADSS

quantitative results are generalizable to the entire active duty spouse population, while the supplemental ADSS results will be analyzed for qualitative patterns and themes.

OPA uses a sampling tool developed by the Research Triangle Institute (RTI) to determine the sample size needed to achieve 95% confidence and an associated precision of 5% or less on each reporting category domain. We select a single-stage, non-proportional stratified random sample to ensure statistically adequate expected number of responses for the reporting domains. OPA uses Service, paygrade, gender, and family status to define the initial strata. We collapse these strata when there are fewer than 200 individuals in the stratum. OPA weights the eligible respondents in order to make inferences about the entire population of active duty spouses. The weighting methodology utilizes standard weighting processes.

The full ADSS and supplemental ADSS contain two matching questions which will be used to gauge potential differences between the scientifically sampled and weighted ADSS responses and the convenience sample responding to the supplemental survey. At the end of the supplemental short survey, spouses will be asked if they would like to voluntarily provide their personal email address to be contacted for future spouse surveys.

The supplemental ADSS and full ADSS are administered via the web. The full ADSS also includes a paper survey option and QR code link to the survey to maximize response rates. Respondents may access the survey via the web on a device they select. The web survey will be administered on proprietary software developed by OPA's operations contractor, Data Recognition Corporation (DRC). Digitally signed emails, electronic files, and web-based technology will be used for respondent communications and for data collection.

Dated: May 25, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-11359 Filed 5-27-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2021-OS-0011]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 28, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Angela Duncan, 571-372-7574, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Telework Agreement; DD Form 2946; OMB Control Number 0704-ATEL.

Type of Request: Regular.

Number of Respondents: 560,000.

Responses per Respondent: 1.

Annual Responses: 560,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 186,667.

Needs And Uses: Information is collected to register individuals as participants in the DoD alternative workplace program; to manage and document the duties of participants; and to fund, evaluate and report on program activity. All employees who are authorized to telework shall complete a DD Form 2946. The DD Form 2946 shall be signed and dated by the employee's supervisor. Components are encouraged to include a DD Form 2946 in the new employee onboarding packages for those employees occupying telework eligible positions to ensure that they are aware of their telework responsibilities, should telework be offered or requested.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: May 25, 2021.

Kayyonne T. Marston,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2021-11360 Filed 5-27-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2020-OS-0101]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received June 28, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:
Angela Duncan, 571-372-7574, or

whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Trusted Capital Digital Marketplace Application; OMB Control Number 0704-0596.

Type of Request: Extension.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 90 minutes.

Annual Burden Hours: 450.

Needs and Uses: Per the authority vested in the Secretary of Defense (SECDEF) by Section 1711 of the National Defense Authorization Act of 2018, the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)) has proposed a "Trusted Capital" initiative in the form of a public-private partnership designed to convene trusted sources of private capital with innovative companies critical to the defense industrial base (DIB) and national security. The initiative includes establishment of a Trusted Capital Digital Marketplace (TCDM) to facilitate business relationships between eligible investors ("Capital Providers") and eligible small and medium-sized businesses that have been "down-selected" by Department of Defense (DoD) Components based on relevancy, technical merit, business viability, or innovativeness ("Capability Providers"). The COVID-19 pandemic highlighted the criticality of the security and resiliency of defense supply chains. The Federal emergency enabled DoD to accelerate initiatives to identify constraints and risks in our supply chains that were initially identified in the Executive Order (E.O.) 13806 report, which was published in 2018. One of the risk archetypes identified in the report is foreign dependency on capital and supply chains. Although DoD will always have a diverse, domestic and international supply chain, we recognize that this comes with some risk. COVID-19 magnified that risk and the difficulties of offshore sources of capital and supply in times of global emergencies. The OUSD(A&S) Trusted Capital program offers critical technology companies an alternative to adversarial capital. To accomplish this important national security mission the Trusted Capital program requires the ability to gather data required to conduct national security and supply chain due-diligence to prioritize "trusted" sources of commercial capital to offset direct financial distress in the DIB and support our partners affected

by the virus with investments and local job creation. Information collected will be used in determining an applicant's eligibility for TCDM participation. Parties will complete an electronic application and be subjected to a due diligence screening process to assess for adversarial foreign ownership, influence, or control—as well as other national security risks. In the event additional information is necessary to process an application, additional inquiries may be sent to the applicant. Applicants that receive a favorable due diligence screening adjudication by OUSD(A&S) will be approved for TCDM participation. In addition to initial application requirements, participants will be subject to continuous reporting obligations.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: May 25, 2021.

Kayyonne T. Marston,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2021-11365 Filed 5-27-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2021 for the Native Hawaiian Education (NHE) program, Assistance Listing Number 84.362A. This is the first grant competition for this program under section 11006(2) of the American Rescue Plan (ARP) Act of 2021. This notice relates to the approved information collection under OMB control number 1894-0006.

DATES:

Applications Available: May 28, 2021.

Deadline for Transmittal of Applications: July 2, 2021.

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 February 13, 2019 (84 FR 3768), and available at www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.

FOR FURTHER INFORMATION CONTACT:

Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW, room 3E306, Washington, DC 20202. Telephone: (202) 401-1265. Email: Hawaiian@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the NHE program is to support innovative projects that recognize and address the unique educational needs of Native Hawaiians. The ARP Act provides an additional \$85 million to support Native Hawaiians and Native Hawaiian communities that have been significantly impacted by the novel coronavirus disease (COVID-19) pandemic by funding innovative projects that are distinct from the projects previously funded under the NHE program. These projects must include one or more of the activities authorized under section 6205(a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). New grantees may propose projects that address current needs in the Native Hawaiian community in connection with the COVID-19 pandemic. Existing grantees may propose either new projects to address newly identified needs in response to COVID-19 or projects that build on and

leverage current NHE-funded activities to address the additional impacts of COVID-19.

Although there are many types of activities authorized under section 6205(a)(3) of the ESEA, NHE ARP program funding may not be used for the acquisition of real property or construction under 34 CFR 75.533. However, this general prohibition on construction and acquisition of real property does not extend to activities that meet the definition of “minor remodeling” under 34 CFR 77.1. For more information, see the *Funding Restrictions* section of this notice.

Background: The NHE program traditionally serves the unique educational needs of Native Hawaiians and recognizes the roles of Native Hawaiian languages and cultures in the educational success and long-term well-being of Native Hawaiian students. The program supports effective supplemental education programs that maximize participation of Native Hawaiian educators and leaders in the planning, development, implementation, management, and evaluation of programs designed to serve Native Hawaiians. Funding is provided in the ARP Act for awards to NHE-eligible entities for the NHE activities authorized under section 6205(a)(3) of the ESEA with the purpose of supporting educational opportunities for Native Hawaiians who, and Native Hawaiian communities that, have been significantly impacted by the COVID-19 pandemic.

In order to target projects that will leverage the additional NHE ARP funding, the Department is establishing two distinct priorities. Applicants must address one of the two absolute priorities. Applicants have the option, under Absolute Priority 1, to propose to fund activities authorized under section 6205(a)(3) of the ESEA. The Department will award multiple grants under Absolute Priority 1. In contrast, the Department will award only one grant under Absolute Priority 2. Absolute Priority 2 solicits applications that adopt a statewide approach to addressing the unique educational needs of Native Hawaiians through a focus on the collection of data to inform research on the educational status and needs of Native Hawaiian children and adults. Absolute Priority 2 solicits applications for activities currently allowed under section 6205(a)(3) of the ESEA but expands the priority to focus on a statewide approach to the allowable activities.

Each absolute priority supports identified needs in the Native Hawaiian community. Absolute Priority 1 allows

for multiple local or regional grants to be funded consistent with previous NHE grant competitions. Through Absolute Priority 2, the Department intends to expand statewide research and data collection activities to better determine the educational status and needs of Native Hawaiian children and adults.

Priorities: This notice contains two absolute priorities. Consistent with 34 CFR 75.105(b)(2)(v), Absolute Priority 1 is from the activities authorized by section 6205(a)(3) of the ESEA. We are establishing Absolute Priority 2 for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Each applicant must address only one absolute priority. In the FY 2021 NHE grant competition, Absolute Priorities 1–2 constitute their own funding categories. The Secretary intends to award multiple grants under Absolute Priority 1 and one grant under Absolute Priority 2, provided that applications of sufficient quality are submitted. If an entity is interested in proposing two separate projects (*e.g.*, one that addresses Absolute Priority 1 and another that addresses Absolute Priority 2), it must submit a separate application for each project.

Absolute Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that address one of Absolute Priority 1 or Absolute Priority 2. The absolute priority addressed must be clearly noted in the Project Abstract section of the application. Applications that address Absolute Priority 1 must clearly identify which part or parts of the priority the project will address.

These priorities are:

Absolute Priority 1: Native Hawaiian Education Activities.

Projects that address one or more of the following authorized activities pursuant to section 6205(a)(3) of the ESEA:

(a) The development and maintenance of a statewide Native Hawaiian early education and care system to provide a continuum of services for Native Hawaiian children from the prenatal period of the children through age 5.

(b) The operation of family-based education centers that provide such services as—

(i) Programs for Native Hawaiian parents and their infants from the

prenatal period of the infants through age 3;

(ii) Preschool programs for Native Hawaiians; and

(iii) Research on, and development and assessment of, family-based, early childhood, and preschool programs for Native Hawaiians.

(c) Activities that enhance beginning reading and literacy in either the Hawaiian or the English language among Native Hawaiian students in kindergarten through grade 3 and assistance in addressing the distinct features of combined English and Hawaiian literacy for Hawaiian speakers in grades 5 and 6.

(d) Activities to meet the special needs of Native Hawaiian students with disabilities, including—

(i) The identification of such students and their needs;

(ii) The provision of support services to the families of such students; and

(iii) Other activities consistent with the requirements of the Individuals with Disabilities Education Act.

(e) Activities that address the special needs of Native Hawaiian students who are gifted and talented, including—

(i) Educational, psychological, and developmental activities designed to assist in the educational progress of those students; and

(ii) Activities that involve the parents of those students in a manner designed to assist in the educational progress of such students.

(f) The development of academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian tradition and culture.

(g) Professional development activities for educators, including—

(i) The development of programs to prepare prospective teachers to address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;

(ii) In-service programs to improve the ability of teachers who teach in schools with high concentrations of Native Hawaiian students to meet the unique needs of such students; and

(iii) The recruitment and preparation of Native Hawaiians, and other individuals who live in communities with a high concentration of Native Hawaiians, to become teachers.

(h) The operation of community-based learning centers that address the needs of Native Hawaiian students, parents, families, and communities through the coordination of public and private programs and services, including—

(i) Early childhood education programs;

(ii) Before, after, and summer school programs, expanded learning time, or weekend academies;

(iii) Career and technical education programs; and

(iv) Programs that recognize and support the unique cultural and educational needs of Native Hawaiian children, and incorporate appropriately qualified Native Hawaiian elders and seniors.

(i) Activities, including program co-location, to enable Native Hawaiians to enter and complete programs of postsecondary education, including—

(i) Family literacy services; and

(ii) Counseling, guidance, and support services for students.

(j) Research and data collection activities to determine the educational status and needs of Native Hawaiian children and adults.

(k) Other research and evaluation activities related to programs carried out under title VI, part B of the ESEA.

(l) Other activities, consistent with the purposes of title VI, part B of the ESEA, to meet the educational needs of Native Hawaiian children and adults.

Absolute Priority 2: Research and Data Collection Activities.

Statewide projects that propose research and data collection activities to determine the educational status and needs of Native Hawaiian children and adults.

Definitions: The definitions below are from 34 CFR 77.1(c) and sections 4310(2), 6207, and 8101 of the ESEA. These definitions apply to the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Charter school means a public school that—

(a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment

practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the "Family Educational Rights and Privacy Act of 1974"), and part B of the Individuals with Disabilities Education Act;

(h) Is a school to which parents choose to send their children, and that (1) admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or (2) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(m) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

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. (34 CFR 77.1(c))

Logic model (also referred to as a 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. (34 CFR 77.1(c))

Native Hawaiian means any individual who is—

(a) A citizen of the United States; and
(b) A descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—

(1) Genealogical records;
(2) Kupuna (elders) or Kamaaina (long-term community residents) verification; or
(3) Certified birth records. (Section 6207(2) of the ESEA)

Native Hawaiian community-based organization means any organization that is composed primarily of Native Hawaiians from a specific community and that assists in the social, cultural, and educational development of Native Hawaiians in that community. (Section 6207(3) of the ESEA)

Native Hawaiian educational organization means a private nonprofit organization that—

(a) Serves the interests of Native Hawaiians;
(b) Has Native Hawaiians in substantive and policymaking positions within the organization;
(c) Incorporates Native Hawaiian perspective, values, language, culture, and traditions into the core function of the organization;
(d) Has demonstrated expertise in the education of Native Hawaiian youth; and
(e) Has demonstrated expertise in research and program development. (Section 6207(4) of the ESEA)

Native Hawaiian language means the single Native American language indigenous to the original inhabitants of the State of Hawaii. (Section 6207(5) of the ESEA)

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). (34 CFR 77.1(c))

Regular high school diploma (a) means the standard high school diploma awarded to the preponderance of

students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in ESEA section 1111(b)(1)(E); and (b) does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. (Section 8101(43) of the ESEA)

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. (34 CFR 77.1(c))

Application Requirement: In order to ensure consistency across all NHE programs, we are establishing the following application requirement for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1): Each applicant for a grant under this program must submit the application for comment to the local educational agency (LEA) serving students who will participate in the program to be carried out under the grant (*i.e.*, Hawaii State Department of Education), and include those comments, if any, with the application to the Secretary.

Program Requirement: In order to ensure consistency across all NHE programs, we are establishing the following program requirement for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1):

No more than five percent of funds awarded for a grant under this program may be used for administrative costs. This five-percent limit does not include indirect costs.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 11006(2) of the ARP Act and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on Absolute Priority 2, the application

requirement, and the program requirement under section 437(d)(1) of GEPA. These priorities and requirements will apply to the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Section 11006(2) of the ARP Act and section 6205 of the ESEA (20 U.S.C. 7515).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 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.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$85,000,000 for three years.

Estimated Range of Awards:

(1) *Absolute Priority 1: Authorized Native Hawaiian Education Activities:* \$250,000—\$950,000 for each 12-month budget period.

(2) *Absolute Priority 2: Research and Data Collection Activities:* \$1,000,000—\$3,000,000 for each 12-month budget period.

Estimated Average Size of Awards:

(1) *Absolute Priority 1: Authorized Native Hawaiian Education Activities:* \$750,000 for each 12-month budget period.

(2) *Absolute Priority 2: Research and Data Collection Activities:* \$2,000,000 for each 12-month budget period.

Estimated Number of Awards: 36.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible to apply under this competition:

(a) Native Hawaiian educational organizations.
(b) Native Hawaiian community-based organizations.
(c) Public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or

programs of instruction in the Native Hawaiian language.

(d) Charter schools.

(e) Consortia of the organizations, agencies, and institutions described in paragraphs (a) through (c).

Note: Although State educational agencies (SEAs) and LEAs are not eligible entities, applicants are encouraged to partner and coordinate with an SEA or LEA in proposing and implementing a project. In addition, all applicants must meet the application requirement to solicit comments on the proposed project from the LEA and submit those comments, if any, with the application.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

c. *Administrative Cost Limitation:* No more than five percent of funds awarded for a grant under this program may be used for administrative costs. This five-percent limit does not include indirect costs.

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 February 13, 2019 (84 FR 3768), and available at www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf, which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the NHE program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you

may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* As previously noted, NHE ARP program funding may not be used for the acquisition of real property or construction under 34 CFR 75.533. However, this general prohibition on construction and acquisition of real property does not extend to activities that meet the definition of “minor remodeling” under 34 CFR 77.1. Examples of permissible “minor remodeling” that ARP funds may support include minor alterations in a previously completed building, for purposes associated with the COVID-19 pandemic. The term does not include permanent building construction, structural alterations to buildings, building maintenance, or repairs. Some examples of permissible minor remodeling, under most circumstances, could include, but are not limited to the installation or renovation of an HVAC system to help with air filtration to prevent the spread of COVID-19, the purchase or lease of temporary trailer classroom units to increase social distancing, and the purchase or costs of the installation of “room dividers” within a previously completed building to increase social distancing.

We reference regulations outlining additional funding restrictions in the *Applicable Regulations* and *Administrative Cost Limitation* sections of this notice.

5. *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 (1) limit the application narrative to no more than 30 pages and (2) 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 or 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, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

The selection criteria are as follows:

(a) *Need for project (up to 10 points).*

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Quality of the project design (up to 30 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) 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 project personnel (up to 10 points).*

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(3) In addition, the Secretary considers the qualifications, including

relevant training and experience, of key project personnel (up to 5 points).

(d) *Quality of the management plan (up to 30 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) *Quality of the project evaluation (up to 20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes (up to 10 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (up to 10 points).

Note: The project evaluation selection criterion relates to performance measure (1) under the Performance Measures section of this notice.

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).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition 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.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of the Government Performance and Results Act of 1993 and for Department reporting under 34 CFR 75.110, we have established four performance measures for the NHE program: (1) The number of grantees that attain or exceed the targets for the outcome indicators for their projects that have been approved by the Secretary; (2) the percentage of Native Hawaiian children participating in early education programs who consistently demonstrate school readiness in literacy as measured by the Hawaii School Readiness Assessment (HSRA); (3) the percentage of students in schools served by the program who graduate from high school with a regular high school diploma (as defined in this notice) in four years; and (4) the percentage of students participating in a Native Hawaiian language (as defined in this notice) program that is conducted under the NHE program who meet or exceed proficiency standards in reading on a test of the Native Hawaiian language.

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, 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: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ian Rosenblum,

Deputy Assistant Secretary for Policy and Programs Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021-11497 Filed 5-27-21; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0079]

Agency Information Collection Activities; Comment Request; Required Proprietary Institution Certification Form

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: OMB approved this information collection under emergency processing on May 10, 2021. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2021-SCC-0079. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *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 Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Epps, 202-453-6337.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Required Proprietary Institution Certification Form.

OMB Control Number: 1840–0855.

Type of Review: Extension.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 1,757.

Total Estimated Number of Annual Burden Hours: 879.

Abstract: The American Rescue Plan Act of 2021 provides funding for proprietary institutions of higher education, to be used solely to make financial aid grants directly to students, which may be used for any component of the student's cost of attendance or for emergency costs that arise due to the coronavirus, such as tuition, food, housing, health care (including mental health care) or child care. This collection includes required certifications that must be completed by proprietary institutions seeking funding under this statute.

Additional Information: The Department received emergency clearance for this information collection in order to issue awards in a timely manner. Due to the heightened risk associated with proprietary institutions, the Department determined it necessary to obtain additional certifications prior to making further awards under the (a)(4) funding stream. Without approval of the Required Proprietary Institution Certifications form, the Department would have been forced to delay making ARP (a)(4) awards to these institutions. Delay of ARP (a)(4) awards would be particularly problematic, as Congress has designated these funds as being solely directed to emergency financial aid grants to students at these institutions.

Dated: May 25, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2021–11357 Filed 5–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0080]

Agency Information Collection Activities; Comment Request; Voluntary Decline of Higher Education Emergency Relief Funds Form

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: OMB approved this information collection under emergency processing on May 10, 2021. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2021–SCC–0080. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *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 Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Epps, 202–453–6337.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of

information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Voluntary Decline of Higher Education Emergency Relief Funds Form.

OMB Control Number: 1840–0856.

Type of Review: Extension.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 125.

Total Estimated Number of Annual Burden Hours: 63.

Abstract: Funding for the Higher Education Emergency Relief Fund (HEERF) is provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136), the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116–260) and the American Rescue Plan Act of 2021 (Pub. L. 117–2). Institutions eligible for funding under these statutes may elect to voluntarily decline all or a portion of their HEERF grant awards, in which case the U.S. Department of Education (the Department) will then de-obligate the funds from the institution's G5 account and will later redistribute the funds to other institutions with greater needs due to the coronavirus. In order to process the de-obligation and redistribution of these funds more efficiently, the Department is requesting approval of a short form that will allow these institutions to provide the Department with information regarding the funds being declined.

Additional Information: The Department received emergency clearance for this information collection in order to issue awards in a timely

manner. Due to the heightened risk associated with proprietary institutions, the Department determined it necessary to obtain additional certifications prior to making further awards under the (a)(4) funding stream. Without approval of the Required Proprietary Institution Certifications form, the Department would have been forced to delay making ARP (a)(4) awards to these institutions. Delay of ARP (a)(4) awards would be particularly problematic, as Congress has designated these funds as being solely directed to emergency financial aid grants to students at these institutions.

Dated: May 25, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2021-11358 Filed 5-27-21; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Standards Board Annual Meeting.

DATES: Thursday, June 17, 2021 1:30 p.m.–4:30 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw>.

FOR FURTHER INFORMATION CONTACT:

Kristen Muthig, Telephone: (202) 897-9285, Email: kmuthig@eac.gov.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94-409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual annual meeting of the EAC Standards Board to conduct regular business, discuss EAC updates and upcoming programs, and discuss the Voluntary Voting System Guidelines (VVSg) 2.0 next steps.

Agenda: The U.S. Election Assistance Commission (EAC) Standards Board will hold their 2021 Annual Meeting primarily to discuss next steps regarding the recently approved VVSg 2.0 Requirements, including the VVSg 2.0 lifecycle policy. This meeting will

include a question and answer discussion between board members and EAC staff.

Board members will also review FACA Board membership guidelines and policies with EAC General Counsel and receive a general update about the EAC from the Executive Director including potential new and updated EAC programing for the coming year. Board members will also discuss and provide input on the National Institute of Standards and Technology's portion of the March 7, 2021 Executive Order on Promoting Access to Voting. The Board will also elect new members to the Executive Board Committee and consider amendments to the Bylaws.

Background: On February 10, 2021 the U.S. Election Assistance Commission (EAC) announced the adoption of the Voluntary Voting System Guidelines (VVSg) 2.0; the VVSg 2.0 is the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSg on December 13, 2005. In an effort to update and improve version 1.0 of the VVSg, on March 31, 2015, the EAC commissioners unanimously approved VVSg 1.1.

The full agenda will be posted in advance on the EAC website: <https://www.eac.gov>.

Status: This meeting will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021-11508 Filed 5-26-21; 4:15 pm]

BILLING CODE 6820-KF-P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Board of Advisors Annual Meeting.

DATES: Wednesday, June 23, 2021 1:00–4:00 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw>.

FOR FURTHER INFORMATION CONTACT:

Kristen Muthig, Telephone: (202)-897-9285, Email: kmuthig@eac.gov.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94-409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual annual meeting of the Board of Advisors to conduct regular business and discuss the Voluntary Voting System Guidelines 2.0 next steps.

Agenda: The U.S. Election Assistance Commission (EAC) Board of Advisors will hold their 2021 Annual Meeting primarily to discuss next steps regarding the recently approved VVSg 2.0 Requirements, including the VVSg 2.0 lifecycle policy and manual enhancements. This meeting will include a question and answer discussion between board members and EAC staff.

Board members will also review FACA Board membership guidelines and policies with EAC General Counsel and receive a general update about the EAC from the Executive Director. Board members will also discuss and provide input on the National Institute of Standards and Technology's portion of the March 7, 2021 Executive Order on Promoting Access to Voting. The Board will also elect new members to the Executive Board Committee and consider amendments to the Bylaws.

Background: On February 10, 2021 the U.S. Election Assistance Commission (EAC) announced the adoption of the Voluntary Voting System Guidelines (VVSg) 2.0; the VVSg 2.0 is the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSg on December 13, 2005. In an effort to update and improve version 1.0 of the VVSg, on March 31, 2015, the EAC commissioners unanimously approved VVSg 1.1.

The full agenda will be posted in advance on the EAC website: <https://www.eac.gov>.

Status: This meeting will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021-11506 Filed 5-26-21; 4:15 pm]

BILLING CODE P

DEPARTMENT OF ENERGY**[OE Docket No. EA-289-D]****Application to Export Electric Energy; Intercom Energy, Inc.****AGENCY:** Office of Electricity, Department of Energy.**ACTION:** Notice of application.

SUMMARY: Intercom Energy, Inc. (Applicant or Intercom) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 28, 2021.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov, or by facsimile to (202) 586-8008.

FOR FURTHER INFORMATION CONTACT: Matt Aronoff, 202-586-5863, matthew.aronoff@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 17, 2021, Intercom filed an application with DOE (Application or App.) to transmit electric energy from the United States to Mexico for a term of five years. Intercom states that it “is a California corporation with its principal place of business in San Diego, California.” App. at 2. Intercom further represents that it “is a wholly-owned subsidiary of Intercom Energy USA, Inc. (“Intercom USA”), which is a California company with its principal place of business in San Diego, California.” *Id.* Intercom represents that it “does not own, control or operate any electric generation, distribution or transmission assets or natural gas transportation or distribution assets in the United States or Mexico.” *Id.*

Intercom further states that it “will purchase the electric energy to be exported to Mexico from electric utilities and federal power marketing agencies as those terms are defined in Sections 3(22) and 3(19) of the Federal Power Act.” App. at 6. Intercom contends that its proposed exports “will not impair or have an adverse consequence on the sufficiency or operation of the electric power system

and regional transmission systems within the United States or on the maintenance of adequate generation resources in the United States” since by definition this power is surplus to the system *Id.*

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission’s (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Intercom’s application to export electric energy to Mexico should be clearly marked with OE Docket No. EA-289-D. Additional copies are to be provided directly to Ernesto Pallares, 2436 A Street, Suite C, San Diego, CA 92102, ernest.pall@intercom-energy.com; William DeGrandis, 2050 M Street NW, Washington, DC 20036, billdegrandis@paulhastings.com; Jenna McGrath, 2050 M Street NW, Washington, DC 20036, jennamcgrath@paulhastings.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE’s National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at <http://energy.gov/node/11845>, or by emailing Matt Aronoff at matthew.aronoff@hq.doe.gov.

Signed in Washington, DC, on May 25, 2021.

Christopher Lawrence,

Management and Program Analyst, Energy Resilience Division, Office of Electricity.

[FR Doc. 2021-11340 Filed 5-27-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER21-1961-000]****Big River Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced Big River Solar, LLC’s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 14, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://www.ferc.gov>) using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Dated: May 24, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-11362 Filed 5-27-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2934-031]

Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests; New York State Electric & Gas Corporation

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Proceeding*: Request for temporary amendment of Article 402.
- b. *Project No.*: 2934-031.
- c. *Date Filed*: March 31, 2021, and supplemented April 22, 2021.
- d. *Licensee*: New York State Electric & Gas Corporation.
- e. *Name of Project*: Upper Mechanicville Hydroelectric Project.
- f. *Location*: The project is located on the Hudson River in Saratoga and Rensselaer counties, New York.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Licensee Contact*: Mr. David W. Dick, New York State Electric & Gas Corporation, 89 East Avenue, Rochester, NY 14649, (585) 724-8535, david_dick@rge.com.
- i. *FERC Contact*: Jeremy Jessup, (202) 502-6779, Jeremy.Jessup@ferc.gov.
- j. *Deadline for filing comments, motions to intervene, and protests*, is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters,

without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P-2934-031. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: The applicant proposes to temporarily amend Article 402 of the license until December 2023. The licensee has identified that the majority of the inflatable crest gate bladders have reached their service life and require replacement. The licensee is proposing to lower the impoundment elevation requirement from 72 inches or greater above the fixed spillway to 50 inches or greater above the fixed spillway. The licensee states this will limit the continuous load on the fully inflated bladders until the replacement and upgrade of the remaining bladders. The licensee will continue to operate the project in run-of-river mode and provide the seasonal minimum bypass flow beginning on May 1, 2021.

l. *Locations of the Application*: This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via

email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 18, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11338 Filed 5-27-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 2936–008]****City of Rock Island, Illinois; Notice of Application for Surrender of Exemption, Soliciting Comments, Motions To Intervene, and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of exemption.

b. *Project No:* P–2936–008.

c. *Date Filed:* April 21, 2021.

d. *Applicant:* City of Rock Island, Illinois.

e. *Name of Project:* Sears Hydroelectric Project.

f. *Location:* The project is located on the Rock River in the City of Rock Island, Rock Island County, Illinois. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Michael Bartels, City of Rock Island, IL, 1309 Mill Street, Rock Island, IL 61201, (309) 732–2200, bartels.michael@rigov.org.

i. *FERC Contact:* Diana Shannon, (202) 502–6136, diana.shannon@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* June 21, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first

page of any filing should include the docket number P–2936–008. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to surrender its exemption. The applicant states the project has been off-line since December 2018 and has become uneconomical to operate. The applicant proposes to decommission the project by removing the power generating equipment, except for the turbines, from the powerhouse. The dams and powerhouse, owned by the state, would remain in place and no ground disturbing activities would occur.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 21, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021–11336 Filed 5–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. CP21–446–000]****ANR Pipeline Company; Notice of Application and Establishing Intervention Deadline**

Take notice that on May 11, 2021, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 1300, Houston, TX 77002, filed in the above referenced docket an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations for its proposed Skunk River Replacement Project. Specifically, ANR requests authorization to abandon and replace approximately 1,880 feet of its 24-inch mainline, designated as Line 0–100, in Henry County, Iowa. The project will involve the replacement of approximately 1,880 feet of its existing Line 0–100 with the replacement of approximately 1,880 feet of new Line 0–100, from milepost (MP) 626.65 to MP 627.00. ANR states that the replacement will be done via a horizontal directional drill bore. In addition, ANR estimates the project will cost approximately \$4,329,321, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application should be directed to John Ryan, Legal Counsel, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas, by phone at 832.320.5879, or by email at john_ryan@tcenergy.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on June 10, 2021.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before June 10, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP21-446-000) in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address below.² Your written comments must reference the Project docket number (CP21-446-000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in

determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,³ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is June 10, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

There are two ways to submit your motion to intervene. In both instances, please reference the project docket number CP21-446-000 in your submission.

(1) You may file your motion to intervene by using the Commission's

² Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

³ 18 CFR 385.102(d).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

¹ 18 CFR (Code of Federal Regulations) 157.9.

eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docsfiling/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.⁶ Your motion to intervene must reference the project docket number CP21-446-000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Motions to intervene must be served on the applicant either by mail or email at: 700 Louisiana Street, Suite 1300, Houston, Texas, or by email at john_ryan@tcenergy.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁷ motions to intervene are automatically granted by operation of Rule 214(c)(1).⁸ Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.⁹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

⁶ Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

⁷ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

⁸ 18 CFR 385.214(c)(1).

⁹ 18 CFR 385.214(b)(3) and (d).

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docsfiling/esubscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on June 10, 2021.

Dated: May 20, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11348 Filed 5-27-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3309-021]

Marlow Hydro, LLC; Notice of Effectiveness of Withdrawal of License Application

On December 1, 2020, Marlow Hydro, LLC (Marlow Hydro) filed an application for a subsequent license for the 225-kilowatt Nash Mill Dam Hydroelectric Project No. 3309. On May 5, 2020, Marlow Hydro filed a notice of withdrawal of its application.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,¹ the withdrawal of the application became effective on May 21, 2021, and this proceeding is hereby terminated.

Dated: May 21, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11337 Filed 5-27-21; 8:45 am]

BILLING CODE 6717-01-P

¹ 18 CFR 385.216(b) (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21-832-000.

Applicants: Tapstone Energy, LLC, FP Wheeler Midstream, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Tapstone Energy, LLC, et al.

Filed Date: 5/19/21.

Accession Number: 20210519-5150.

Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: RP21-833-000.

Applicants: ETC Tiger Pipeline, LLC.

Description: § 4(d) Rate Filing: Filed Agreements Housekeeping to be effective 6/21/2021.

Filed Date: 5/21/21.

Accession Number: 20210521-5054.

Comments Due: 5 p.m. ET 6/2/21.

Docket Numbers: RP21-834-000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement Filing—La Frontera Holdings, LLC to be effective 6/1/2021.

Filed Date: 5/21/21.

Accession Number: 20210521-5218.

Comments Due: 5 p.m. ET 6/2/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 24, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-11363 Filed 5-27-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER21-1962-000]

Mulberry BESS LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Mulberry BESS LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 14, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: May 24, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-11364 Filed 5-27-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21-157-000.

Applicants: Hanwha Q CELLS USA Corp.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hanwha Q Cells USA Corp.

Filed Date: 5/21/21.

Accession Number: 20210521-5266.

Comments Due: 5 p.m. ET 6/11/21.

Docket Numbers: EG21-158-000.

Applicants: Assembly Solar III, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Assembly Solar III, LLC.

Filed Date: 5/14/21.

Accession Number: 20210514-5221.

Comments Due: 5 p.m. ET 6/4/21.

Docket Numbers: EG21-159-000.

Applicants: Point Beach Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Point Beach Solar, LLC.

Filed Date: 5/24/21.

Accession Number: 20210524-5080.

Comments Due: 5 p.m. ET 6/14/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2834-007; ER10-2821-007; ER12-1329-007; ER17-1438-002; ER17-2056-001; ER20-173-001.

Applicants: Munnsville Wind Farm, LLC, Radford's Run Wind Farm, LLC, RWE Renewables Energy Marketing,

LLC, RWE Renewables O&M, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.

Description: Response to April 21, 2021 Deficiency Letter of Munnsville Wind Farm, LLC, et al.

Filed Date: 5/21/21.

Accession Number: 20210521-5267.

Comments Due: 5 p.m. ET 6/11/21.

Docket Numbers: ER15-697-003.

Applicants: Tonopah Solar Energy, LLC.

Description: Notice of Non-Material Change in Status of Tonopah Solar Energy, LLC.

Filed Date: 5/21/21.

Accession Number: 20210521-5269.

Comments Due: 5 p.m. ET 6/11/21.

Docket Numbers: ER21-90-002.

Applicants: Sun Streams 2, LLC.

Description: Notice of Non-Material Change in Status of Sun Streams 2, LLC.

Filed Date: 5/24/21.

Accession Number: 20210524-5082.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: ER21-471-002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2021-05-24_SA 3576 Compliance for MDU-Emmons Logan Wind FSA (J302 J503) to be effective 1/24/2021.

Filed Date: 5/24/21.

Accession Number: 20210524-5118.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: ER21-772-001.

Applicants: Resi Station, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 12/31/2020.

Filed Date: 5/24/21.

Accession Number: 20210524-5162.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: ER21-1978-000.

Applicants: Entergy Nuclear Indian Point 3, LLC.

Description: Tariff Cancellation: Entergy Nuclear Indian Point 3, LLC to be effective 5/22/2021.

Filed Date: 5/21/21.

Accession Number: 20210521-5225.

Comments Due: 5 p.m. ET 6/11/21.

Docket Numbers: ER21-1979-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2825R9 KMEA and Evergy Kansas Central Meter Agent Agreement to be effective 6/1/2021.

Filed Date: 5/24/21.

Accession Number: 20210524-5037.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: ER21-1980-000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits ECSA, SA No. 5950 to be effective 7/24/2021.

Filed Date: 5/24/21.
Accession Number: 20210524–5038.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1981–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2855R6 KMEA and Evergy Metro Meter Agent Agreement to be effective 6/1/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5039.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1982–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits ECSAs, SA Nos. 5941, 5942, and 5949 to be effective 7/24/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5042.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1983–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–05–21_SA 3387 ATXI-Prairie Wolf Solar 1st GIA (J949) to be effective 5/7/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5047.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1984–000.
Applicants: Tampa Electric Company.
Description: § 205(d) Rate Filing: Emergency Interchange Service Schedule A&B–2021 to be effective 5/1/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5067.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1985–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–05–24_SA 3622 NIPSCO-ComEd Certificate of Concurrence to be effective 4/2/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5077.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1986–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of BPA Metering Agreement—WEID to be effective 7/28/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5088.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1987–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: April

2021 RTEP, 30-day Comment Period Requested to be effective 8/22/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5091.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1988–000.
Applicants: SP Garland Solar Storage, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial Baseline Tariff Filing to be effective 5/31/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5098.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1988–001.
Applicants: SP Garland Solar Storage, LLC.
Description: Tariff Amendment: Amendment to MBR Authority Application and Initial Baseline Tariff Filing to be effective 5/31/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5144.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1989–000.
Applicants: SP Tranquillity Solar Storage, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial Baseline Tariff Filing to be effective 5/31/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5100.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1989–001.
Applicants: SP Tranquillity Solar Storage, LLC.
Description: Tariff Amendment: Amendment to MBR Authority Application and Initial Baseline Tariff Filing to be effective 5/31/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5147.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1990–000.
Applicants: Blackwell Wind Energy, LLC.
Description: Baseline eTariff Filing: Blackwell Wind Energy, LLC Application for MBR Authorization to be effective 7/24/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5112.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1991–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2881R12 City of Chanute, KS NITSA NOA to be effective 1/1/2021.
Filed Date: 5/24/21.
Accession Number: 20210524–5126.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: ER21–1992–000.
Applicants: Midcontinent Independent System Operator, Inc.,

Michigan Electric Transmission Company, LLC, Wolverine Power Supply Cooperative, Inc., Consumers Energy Company, Michigan Public Power Agency.

Description: § 205(d) Rate Filing: 2021–05–24_MI JPZ RAA and Settlement Agreement Filing to be effective 6/1/2021.

Filed Date: 5/24/21.

Accession Number: 20210524–5156.

Comments Due: 5 p.m. ET 6/14/21.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF97–48–006.

Applicants: Vicinity Energy Kansas City, Inc.

Description: Form 556 of Vicinity Energy Kansas City, Inc.

Filed Date: 5/24/21.

Accession Number: 20210524–5072.

Comments Due: 5 p.m. ET 6/14/21.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM21–21–000.

Applicants: Big Rivers Electric Corporation.

Description: Application of Big Rivers Electric Corporation to Terminate Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 5/21/21.

Accession Number: 20210521–5273.

Comments Due: 5 p.m. ET 6/18/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 24, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–11361 Filed 5–27–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OLEM-2021-0312; FRL-10024-29-OLEM]****Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of virtual public listening sessions; request for public comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) will host virtual public listening sessions on June 16, 2021 and July 8, 2021. The goals of the sessions are to solicit comments and suggestions from stakeholders pertaining to the review of EPA Risk Management Program (RMP) regulation revisions completed since 2017 and to address new priorities, as directed under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (E.O. 13990). The Occupational Health and Safety Administration (OSHA) will participate in the listening sessions to foster continued coordination with the EPA and receive comments on the Process Safety Management (PSM) Standard. For more information, go to the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: Public listening sessions will be held on June 16, 2021 and July 8, 2021. Should additional dates and times be required, EPA will provide updates on our website: <https://www.epa.gov/rmp/forms/virtual-public-listening-sessions-risk-management-program-rule>. If you are unable to attend any of the listening sessions, you will be able to submit comments at <http://www.regulations.gov>: Enter Docket ID No. EPA-HQ-OLEM-2021-0312 until July 15, 2021.

ADDRESSES: Members of the public, including those that attend and provide verbal statements, are encouraged to send written comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0312, by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OLEM-2021-0312 for this engagement. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending

comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The June 16, 2021 listening session will convene at 12:00 p.m., eastern daylight time, and will conclude at 4:00 p.m., eastern daylight time. The July 8, 2021 listening session will convene at 4:00 p.m., eastern daylight time, and will conclude at 8:00 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT:

Deanne Grant, Regulations Implementation Division, Office of Emergency Management, Office of Land and Emergency Management (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, telephone number: 202-564-1096; email address: grant.deanne@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Public Participation****A. Written Comments**

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0312, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from the docket. 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>.

B. Participation in the Listening Sessions

The public is invited to speak during the June 16, 2021 or the July 8, 2021 listening session. EPA will begin pre-registering speakers for the listening sessions upon publication of this document in the **Federal Register**. To register to speak at the listening sessions, please use the online registration form available at [https://www.epa.gov/rmp/forms/virtual-public-listening-sessions-risk-management-](https://www.epa.gov/rmp/forms/virtual-public-listening-sessions-risk-management-program-rule)

program-rule. The last day to pre-register to speak at the June 16, 2021 listening session will be June 14, 2021. The last day to pre-register to speak at the July 8, 2021 listening session will be July 6, 2021. On the last working day before each listening session, the EPA will post a general agenda for the listening session that will list pre-registered speakers in approximate order at <https://www.epa.gov/rmp/forms/virtual-public-listening-sessions-risk-management-program-rule>.

EPA will make every effort to follow the schedule as closely as possible on the day of each listening session; however, please plan for the listening session to run either ahead of schedule or behind schedule. The EPA will make every effort to accommodate all speakers who register and request a speaking role, although preferences on speaking times may not be able to be fulfilled. Each commenter will have 3 minutes to provide verbal testimony. EPA may allow persons not pre-registered as speakers to present verbal testimony the day of the listening session; EPA will consider such requests during the session as time permits.

The EPA may ask clarifying questions during the verbal presentations but will not respond to the presentations at that time. Written comments and supporting information submitted through the docket during the comment period, now until July 15, 2021, will be considered with the same weight as verbal comments and supporting information presented at the listening sessions.

Commenters should notify the listed contact on the listening sessions registration page if they will need specific equipment or if there are other special needs related to providing verbal comments at the listening sessions. Commenters should also notify the listed contact if they require the service of a translator or special accommodations such as audio description. For these special needs or accommodations, please pre-register for the listening sessions and describe your needs at least one week before the listening session. We may not be able to arrange accommodations without advanced notice.

EPA intends to make each session available for viewing to those who are not participating but are interested in listening. EPA will be posting meeting materials and additional event details on <https://www.epa.gov/rmp/forms/virtual-public-listening-sessions-risk-management-program-rule>, as they become available. Additionally, transcripts of the listening sessions and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the listening sessions will be posted online. While the EPA expects the listening sessions to go forward as set forth above, please monitor our website to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

II. General Information

A. Background

On January 13, 2017, EPA published amendments to 40 CFR part 68, the Chemical Accident Prevention Provisions, also known as the “Risk Management Program” or “RMP,” in a final rule (82 FR 4594; 2017 Amendments). The 2017 Amendments rule was a result of Executive Order (E.O.) 13650, *Improving Chemical Facility Safety and Security*, which directed EPA (and several other federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 Amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements, emergency coordination with local responders, and information availability to the public. EPA received three petitions for reconsideration of the 2017 Amendments rule under CAA section 307(d)(7)(B). On December 19, 2019, EPA promulgated a final RMP rule (84 FR 69834; 2019 Revisions) that acted on the reconsideration petitions. The 2019 Revisions rule repealed several major provisions of the 2017 Amendments and retained other provisions with modifications.

On January 20, 2021, President Biden issued E.O. 13990, which directed federal agencies to review existing regulations and take action to address priorities established by the Biden administration, which include bolstering resilience to the impacts of climate change and prioritizing environmental justice. As a result, EPA is developing a regulatory proposal to revise the RMP regulations at 40 CFR part 68, which implement the requirements of section 112(r)(7) of the Clean Air Act.

EPA has, and will continue to coordinate revisions to the RMP rule with OSHA. EPA’s RMP rule is intended to minimize public impacts of accidental releases through prevention and response while OSHA’s PSM standard is intended to protect workers from the hazards of highly hazardous chemicals. In response to E.O. 13650, OSHA previously published a Request

for Information (RFI) in December 2013 and held a Small Business Advocacy Review (SBAR) panel in June 2016 for the PSM standard. The list of topics OSHA considered is available at <https://www.osha.gov/dsg/psm/index.html>. OSHA will participate in the listening sessions to foster continued coordination with EPA as both agencies consider revisions to their respective rules.

B. Scope of Listening Sessions

The EPA is interested in obtaining perspectives from the public on key E.O. 13990 issues impacting the RMP regulations. In particular, the Agency seeks comments on the following: The adequacy of revisions to the RMP regulations completed since 2017; incorporating consideration of climate change risks and impacts into the regulations; and expanding the application of environmental justice in the RMP. Input from these public listening sessions will be used to inform the EPA’s efforts to improve the RMP regulations and better protect the nation from chemical accidents. OSHA is also interested in obtaining perspectives on issues relevant to the PSM standard.

This notice is not a proposed rulemaking nor is it a reconsideration under CAA section 307(d)(7)(B) of any previous rulemaking. It is an information-gathering exercise to assist EPA in its review as called for under E.O. 13990. Therefore, EPA does not intend to prepare a response to comment document like those prepared for rulemakings. Similarly, OSHA does not intend to prepare a response to the perspectives on PSM offered at these sessions. Instead, in any future rulemaking action, EPA (or OSHA) may draw on the input received in these listening sessions to inform a future proposal, and, in the course of responding to comments on any such future proposed rule, will address similar, relevant comments raised as comments on that notice of proposed rulemaking as appropriate.

C. Stakeholder Involvement

Obtaining stakeholder input is critical to the success of E.O. 13990. In particular, the Agency is interested in hearing from the following stakeholders: Industry sectors regulated under the RMP rule such as chemical manufacturers, chemical storage companies, and agricultural supply companies, state and local regulators, chemical critical infrastructure owners and operators, first responders, labor organizations representing affected workers, environmental and community groups, academic institutions,

consensus standards organizations, and individuals of the general public. Stakeholders considering participating in these listening sessions or otherwise providing comments in response to this notice should submit any written material by July 15, 2021 to allow EPA to consider your points in developing any future regulatory proposal.

Donna Salyer,

Acting Director, Office of Emergency Management.

[FR Doc. 2021–11280 Filed 5–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0306; FRL–10023–48]

Dinotefuran; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Pennsylvania Department of Agriculture and the Virginia Department of Agriculture and Consumer Services to use the pesticide dinotefuran (CAS No. 165252–70–0) to treat up to 25,000 and 29,000 acres, respectively, of pome and stone fruits to control the brown marmorated stinkbug. The applicants propose uses which are supported by the Interregional Research Project Number 4 (IR4) program and have been requested in 5 or more previous years, and petitions for tolerances have not yet been submitted to the Agency. Therefore, as required, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before June 14, 2021.

ADDRESSES: The docket for these actions, identified by docket identification (ID) number EPA–HQ–OPP–2021–0306, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>. Submit your comments, identified by docket ID number EPA-HQ-OPP-2021-0306, by one of the following methods:

- **Federal eRulemaking Portal:** <http://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.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDNRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through www.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 <http://www.epa.gov/dockets/comments.html>.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Pennsylvania Department of Agriculture and the Virginia Department of Agriculture and Consumer Services have requested the EPA Administrator to issue specific exemptions for the use of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug. Information in accordance with 40 CFR part 166 was submitted as part of the requests.

As part of the requests, the applicants assert that the rapid spread of large outbreaks of the brown marmorated stinkbug (an invasive species) has resulted in an urgent and non-routine pest control situation that is expected to cause significant economic losses without the requested uses.

The Applicants propose to make no more than two applications at a rate of 0.203 to 0.304 lb. (maximum total of 0.608 lb.) of dinotefuran per acre on up to 54,000 acres of pome and stone fruits grown in Pennsylvania and Virginia, from May 15 to October 15, 2021. A total of 32,832 lbs. of dinotefuran could be used (maximum acreage at highest rate).

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Pennsylvania Department of Agriculture and the Virginia Department of Agriculture and Consumer Services, as well as any subsequent specific exemption applications submitted by other state lead agencies.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: May 19, 2021.

Marietta Echeverria,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 2021-11371 Filed 5-27-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2021-0083; FRL-10024-04]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients—May 2021

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. 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 June 28, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://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.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090, email address: BPPDFRNotices@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 pesticide petition 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](http://www.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 pesticide products containing active ingredients not included in any currently registered pesticide products. 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. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (<http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions>).

Notice of Receipt—New Active Ingredients

File Symbols: 94218-G and 94218-E.
Docket ID number: EPA-HQ-OPP-2021-0232. *Applicant:* Biofungitek, S.L., Parque Científico y Tecnológico de Bizkaia, Astondo Bidea (Building 612), 48160 Derio, Spain (c/o Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 94899). *Product names:* Potassium Carbonate (99.5% Fine Powder) and NSTKI-014. *Active ingredient:* Biochemical fungicide—Potassium carbonate at 99.5% (Potassium Carbonate (99.5% Fine Powder)) and at 58.04% (NSTKI-

014). *Proposed uses:* For manufacturing or use on agricultural crops, turf, and ornamentals. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 12, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021-11380 Filed 5-27-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9056-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 17, 2021 10 a.m. EST

Through May 24, 2021 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20210057, Revised Final, USFS, AZ, Travel Management on the Tonto National Forest, Review Period Ends: 06/28/2021, Contact: Gregory Schuster 480-292-0291.

EIS No. 20210058, Final Supplement, USACE, CA, American River Watershed Common Features, Water Resources Development Act of 2016 Project—Sacramento Weir Widening, Review Period Ends: 06/28/2021, Contact: Robert Chase 916-557-7630.

EIS No. 20210059, Final, USFS, CO, Enlargement of Monument Reservoir No. 1 Project, Review Period Ends: 07/12/2021, Contact: John Slown 406-493-4196.

EIS No. 20210060, Draft, USACE, TN, North DeSoto County, Mississippi Feasibility Study, Comment Period Ends: 07/12/2021, Contact: Andrea Carpenter 901-544-0817.

Dated: May 24, 2021.

Cindy S. Barber,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021-11321 Filed 5-27-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-ORD-2020-0182; FRL-10024-13-ORD]****Availability of the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period associated with release of the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds. This document communicates information on the scoping needs identified by EPA program and regional offices and the IRIS Program's initial problem formulation activities. EPA is releasing this IRIS Assessment Plan for a 30-day public comment period in advance of a public science webinar planned for July 2021. EPA will announce the virtual public meeting date and registration details in June 2021 on the EPA IRIS website.

DATES: The 30-day public comment period begins May 28, 2021 and ends June 28, 2021. Comments must be received on or before June 28, 2021.

ADDRESSES: The IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds will be available via the internet on the IRIS website at <https://www.epa.gov/iris/iris-recent-additions> and in the public docket at <http://www.regulations.gov>, Docket ID No. EPA-HQ-ORD-2020-0182.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202-566-1752; facsimile: 202-566-9744; or email: Docket_ORD@epa.gov.

For technical information on the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds, contact Mr. Dahnish Shams, CPHEA; telephone (202) 564-2758, email: shams.dahnish@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Information About IRIS Assessment Plans**

EPA's IRIS Program is a human health assessment program that evaluates quantitative and qualitative information on the health effects that may result from exposure to chemicals found in the environment. Through the IRIS Program, EPA provides high quality

science-based human health assessments to support the Agency's regulatory activities and decisions to protect public health. As part of scoping and initial problem formulation activities prior to the development of an assessment, the IRIS Program carries out a broad, preliminary literature survey to assist in identifying health effects that have been studied in relation to the chemical or substance of interest, as well as science issues that may need to be considered when evaluating toxicity. This information, in conjunction with scoping needs identified by EPA program and regional offices, is used to inform the development of an IRIS Assessment Plan (IAP).

The IAP communicates the plan for developing each individual chemical assessment to the public and includes summary information on the IRIS Program's scoping and initial problem formulation activities, objectives and specific aims for the assessment, and a PECO (Populations, Exposures, Comparators, and Outcomes) for the systematic review. The PECO provides the framework for developing detailed literature search strategies and inclusion/exclusion criteria, particularly with respect to evidence stream (e.g., human, animal, mechanistic), exposure measures, and outcome measures. The IAP serves to inform the subsequent development of chemical-specific systematic review protocols, which will be made available for public review.

II. Public Webinar Information

To allow for public input, EPA is convening a public webinar to discuss the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds in July 2021. EPA will announce the virtual public meeting date and registration details in June 2021 on the EPA IRIS website (<https://www.epa.gov/iris>). Registration information will be provided through the IRIS website (<https://www.epa.gov/iris>) and via EPA's IRIS listserv. To sign-up for the IRIS listserv, visit IRIS website at <https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect>.

III. How To Submit Technical Comments to the Docket at <https://www.regulations.gov>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2020-0182 for IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- *Email:* Docket_ORD@epa.gov.

- *Fax:* 202-566-9744. Due to COVID-19, there may be a delay in processing comments submitted by fax.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202-566-1752. Due to COVID-19, there may be a delay in processing comments submitted by mail.

Note: The EPA Docket Center and Reading Room is currently closed to public visitors to reduce the risk of transmitting COVID-19. Docket Center staff will continue to provide remote customer service via email, phone, and webform. The public can submit comments via www.Regulations.gov or email. No hand deliveries are currently being accepted.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2020-0182. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at www.regulations.gov, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through www.regulations.gov or email that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: Documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2021-11383 Filed 5-27-21; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Thursday, June 10, 2021 from 2:00–4:30 p.m. EDT.

PLACE: The meeting will be held virtually.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to external@exim.gov. Interested parties may register for the meeting at <https://app.smartsheet.com/b/form/962a72a980114463a90ba5752d549566>.

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist at 202-480-0062.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2021-11437 Filed 5-26-21; 11:15 am]

BILLING CODE 6690-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, June 8, 2021 at 10:00 a.m. and its Continuation at the

Conclusion of the Open Meeting on June 10, 2021.

PLACE: 1050 First Street NE, Washington, DC (This Meeting Will be a Virtual Meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021-11505 Filed 5-26-21; 4:15 pm]

BILLING CODE 6715-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-WWICC-2021-01; Docket No. 2021-0003; Sequence No. 1]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission.

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the June 23, 2021 meeting of the World War One Centennial Commission (the Commission). The meeting is available to the public. Dial in information will be provided upon request.

DATES:

Applicable: May 20, 2021.

Meeting date: The meeting will be held on Wednesday, June 23, 2021, starting at 11:00 a.m. Eastern Daylight Time (EDT) and ending no later than 12:00 noon, EDT.

ADDRESSES: Due to COVID mitigation, the meeting will be held telephonically. Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. EST, on June 18, 2021, and may be provided by email to daniel.dayton@worldwarlcentennial.org.

Contact Mr. Daniel S. Dayton at daniel.dayton@worldwarlcentennial.org to register to comment during the meeting's 30-minute public comment period. Registered speakers/

organizations will be allowed five (5) minutes and will need to provide written copies of their presentations. Requests to comment, together with presentations for the meeting must be received by 5:00 p.m. EST, on Friday June 18, 2021. Please contact Mr. Dayton at the email address above to obtain meeting materials.

FOR FURTHER INFORMATION CONTACT:

Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 701 Pennsylvania Avenue NW, 123, Washington, DC 20004-2608 202-380-0725 (note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112-272 (as amended), as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes. Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I. The Commission does not have an appropriation and operates on donated funds.

Agenda: Wednesday, June 23, 2021

Old Business

- Acceptance of minutes of last meeting
- Public Comment Period

New Business

- Executive Director's Report—Executive Director Dayton
- First Colors Report—Deputy Director Carr
- Preliminary Plan for Dedication—Carr and Dayton

Other Business

- Chairman's Report
- Set Next Meeting

- Motion to Adjourn

David Coscia,

Agency Liaison Officer, Office of Presidential & Congressional Agency Liaison Services, General Services Administration.

[FR Doc. 2021–11312 Filed 5–27–21; 8:45 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC); Correction

Notice is hereby given of a change in the meeting of the Healthcare Infection Control Practices Advisory Committee (HICPAC); June 3, 2021, from 9 a.m. to 3 p.m., EDT in the original FRN.

The teleconference was published in the **Federal Register** on April 9, 2021, Volume 86, Number 67, page 18533.

The teleconference meeting is being corrected to update the time and should read as follows:

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Healthcare Infection Control Practices Advisory Committee (HICPAC). This virtual meeting is open to the public, limited only by audio and web conference lines (300 audio and web conference lines are available). Registration is required. To register for this web conference, please go to: www.cdc.gov/hicpac. All registered participants will receive the meeting link and instructions shortly before the meeting.

DATES: The meeting will be held on June 3, 2021, from 12 p.m. to 3 p.m., EDT.

This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Koo-Whang Chung, M.P.H., HICPAC, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, CDC, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027, Telephone: (404) 498–0730; Email: HICPAC@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–11379 Filed 5–27–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP, STAC); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice that under Public Law 111–347 (the James Zadroga 9/11 Health and Compensation Act of 2010), as amended by Public Law 114–113, and the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, the World Trade Center Health Program Scientific/Technical Advisory Committee, the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, Ph.D., Designated Federal Officer, WTCHP STAC, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop R–12, Atlanta, GA 30329–4027, Telephone: (513) 841–4515; Email: TCarreonValencia@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–11378 Filed 5–27–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–21CT]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) submitted the information collection request titled “Requirement for Negative Pre-Departure Covid–19 Test Result or Documentation of Recovery From Covid–19 for all Airline or other Aircraft Passengers Arriving into the United States from any Foreign Country” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on February 12, 2021 to obtain comments from the public and affected agencies. This collection accompanies a CDC Order of the same name. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should

be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Requirement for Negative Pre-Departure Covid-19 Test Result or Documentation of Recovery From Covid-19 for all Airline or other Aircraft Passengers Arriving into the United States from any Foreign Country (OMB Control No. 0920–1318, Exp. 5/31/2021)—Extension—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This information collection accompanies the Notice and Order named above. Pursuant to 42 CFR 71.20 and as set forth in greater detail below, this Notice and Order prohibit the introduction into the United States of any airline passenger departing from the any foreign country unless the passenger:

(1) Has a negative pre-departure test result for COVID-19 (Qualifying Test), or (2) written or electronic documentation of recovery from COVID-19 in the form of a positive viral test result and a letter from a licensed health care provider or public health official stating that the passenger has been cleared for travel (Documentation of Recovery).

The negative test must be a viral test that was conducted on a specimen collected during the three days preceding the flight's departure from a foreign country. Passengers must retain written or electronic documentation reflecting the Qualifying Test, or Documentation of Recovery, presented to the airline and produce such documentation upon request to any U.S. government official or a cooperating state or local public health authority.

Pursuant to 42 CFR 71.31(b), the Order constitutes a controlled free pratique to any airline with an aircraft arriving into the United States from any foreign country. Pursuant to the controlled free pratique, the airline must comply with the following conditions in order to receive permission for the aircraft to enter and disembark passengers in the United States:

- Airline or other aircraft operator must verify that every passenger—two years of age or older—onboard the aircraft has attested to receiving a negative Qualifying Test result or to having recovered from COVID-19 after previous SARS-CoV-2 infection, and being cleared to travel by a licensed health care provider or public health official.

- Airline or other aircraft operator must confirm that every passenger onboard the aircraft has documentation of a negative Qualifying Test result or Documentation of Recovery from COVID-19.

Certain exemptions and waivers do apply, and are as follows:

- Crew members of airlines or other aircraft operators, provided that they follow industry standard protocols for the prevention of COVID-19 as set forth in relevant Safety Alerts for Operators (SAFOs) issued by the Federal Aviation Administration (FAA).

- Airlines or other aircraft operators transporting passengers with COVID-19 pursuant to CDC authorization and in accordance with CDC guidance.

- Federal law enforcement personnel on official orders who are traveling for the purpose of carrying out a law enforcement function, provided they are covered under an occupational health and safety program in accordance with CDC guidance. Those traveling for training or other business purposes remain subject to the requirements of this Order.

- U.S. Department of Defense (DOD) personnel, including military personnel and civilian employees, dependents, contractors (including whole aircraft charter operators), and other U.S. government employees when traveling on DOD assets, provided that such individuals are under competent military or U.S. government travel orders and observing DOD precautions to prevent the transmission of COVID-

19 as set forth in *Force Protection Guidance Supplement 14—Department of Defense Guidance for Personnel Traveling During the Coronavirus Disease 2019 Pandemic* (December 29, 2020) including its testing guidance.

- Individuals and organizations for which the issuance of a humanitarian exemption is necessary based on both: (1) exigent circumstances where emergency travel is required to preserve health and safety (e.g., emergency medical evacuations), and (2) where pre-departure testing cannot be accessed or completed before travel. Additional conditions may be placed on those granted such exemptions, including but not limited to, observing precautions during travel, providing consent to post-arrival testing, and/or self-quarantine after arrival in the United States, as may be directed by federal, state, territorial, tribal or local public health authorities to reduce the risk of transmission or spread.

CDC is also performing random compliance checks to help ensure documentation, such as test results, meet the requirement of the Order and may collect some contact information in the event some public health follow up action is needed at the time of arrival. Additionally, some outbound air passengers flying to foreign countries may be denied entry to their destination country and may not be able to get a COVID-19 test before boarding a plane back to the United States. CDC works with airlines to receive passenger contact information of these returned air passengers in case public health follow up is needed.

CDC requests approval for an estimated 197,919,951 annual burden hours. The estimated respondent cost is \$9,297,175,813. CDC anticipates certain cost burdens to respondents and record keepers due to the requirements. These costs fall into the following categories:

- Traveler testing and ancillary costs: \$30,789,500,000.

- Traveler deferred travel costs: \$116,327,500.

- Airline staff costs for digitizing attestations: \$55,036,667.

- Airline costs to store attestations: \$3,350 to \$2,925,000 a year depending on size of airline and number of travelers.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Traveler (3rd Party Disclosure)	Attestation of a negative COVID-19 test/Documentation indicating clearance for travel by a licensed healthcare provider or public health official.	95,000,000	1	2
Airline Desk Agent	Attestation of a negative COVID-19 test/Documentation indicating clearance for travel by a licensed healthcare provider or public health official.	95,000,000	1	5/60
Traveler	Request Exemption on Urgent Humanitarian Basis—(No form).	1,300	1	2
Traveler with non-compliant test or documentation of recovery.	Contact information collection for public health follow up—(No form).	5,700	1	5/60
Returned Inadmissible Traveler.	Contact information collection for public health follow up—(No form).	835	1	5/60
Airline Representative	Contact information collection for public health follow up—(No form).	835	1	10/60

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.*

[FR Doc. 2021-11351 Filed 5-27-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-21-0900]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Contact Investigation Outcome Reporting Forms to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on March 8, 2021 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Contact Investigation Outcome Reporting Forms (OMB Control No. 0920-0900, Exp. 05/31/2021)—Revision—National Center for Emerging Zoonotic and Infectious Diseases

(NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC proposes to collect passenger-level, epidemiologic, demographic, and health status data from state/local Health Departments and maritime operators at the conclusion of contact investigations of individuals believed to have been exposed to a communicable disease during travel. The information requested by CDC would be obtained by the health departments or maritime operators while conducting the contact investigation according to their established policies and procedures, and would be reported to CDC on a voluntary basis. This information will assist CDC in fulfilling its regulatory responsibility to prevent the importation of communicable diseases from foreign countries (42 CFR part 71) and interstate control of communicable diseases in humans (42 CFR part 70).

CDC provides state and local health departments and maritime conveyance operators with information to notify and contact individuals, and to further investigate this exposure by contacting others who may have been potentially exposed to disease. However, there currently is no standardized tool or form to collect pertinent information regarding the outcome of such investigations.

To address the need to inform CDC of additional actions that may be needed to further protect public health based on the outcome of the contact investigations, CDC has developed forms to assist health departments and maritime conveyance operators in reporting back to CDC. The forms are specific to the nature of the investigation; Tuberculosis (TB),

Measles, and Rubella, or the General form for other diseases of public health concern. The purpose of the forms is the same: To collect information to help CDC quarantine officials to fully understand the extent of disease spread and transmission during travel, and to inform the development of and/or

refinement of investigative protocols, aimed at reducing the spread of communicable disease.

Respondents are state and local health departments and maritime conveyance operators. Respondents may use these standardized forms to submit data voluntarily to CDC for each individual

contacted via a secure means of their choice (e.g., web-based application, fax or email). CDC requests approval for an estimated 1,422 annual burden hours. There is no cost to respondents other than their time to complete the forms and submit the data to CDC.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response
Cruise Ship Physicians/Cargo Ship Managers	Clinically Active TB Contact Investigation Outcome Reporting Form—Maritime.	15	1	20/60
Cruise Ship Physicians/Cargo Ship Managers	Varicella Investigation Outcome Reporting Form—Maritime.	20	1	20/60
Cruise Ship Physicians/Cargo Ship Managers	Influenza Like Illness Investigation Outcome Reporting Form—Maritime.	30	1	20/60
State/Local public health staff	General Contact Investigation Outcome Reporting Form—Air.	16,672	1	5/60
State/Local public health staff	TB Contact Investigation Outcome Reporting Form—Air.	38	1	5/60
State/Local public health staff	Measles Contact Investigation Outcome Reporting Form—Air.	73	1	5/60
State/Local public health staff	Rubella Contact Investigation Outcome Reporting Form—Air.	5	1	5/60
State/Local public health staff	General Contact Investigation Outcome Reporting Form—Land.	15	1	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–11319 Filed 5–27–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–21–0234]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled The National Ambulatory Medical Care Survey (NAMCS) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on January 28, 2021 to obtain comments from the public and affected agencies. CDC received no comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project.

The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7118. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting

“Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB Control No. 0920–0234, Exp. 05/31/2022)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Ambulatory Medical Care Survey (NAMCS) was conducted intermittently from 1973 through 1985, and annually since 1989. The survey is conducted under authority of Section 306 of the Public Health Service Act (42 U.S.C. 242k). NAMCS is part of the ambulatory care component of the National Health Care Surveys (NHCS), a family of provider-based surveys that capture health care utilization from a variety of settings, including hospital inpatient and long-term care facilities. NCHS surveys of health care providers include NAMCS, the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB Control No. 0920–

0278, Exp. 09/30/2023), the National Hospital Care Survey (OMB Control No. 0920–0212, Exp. 03/31/2022), and National Post-acute and Long-term Care Study (OMB Control No. 0920–0943, Exp. 09/30/2023).

An overarching purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States; this fulfills one of NCHS missions, to monitor the nation's health. In addition, NAMCS provides ambulatory medical care data to study: (1) The performance of the U.S. health care system, (2) care for the rapidly aging population, (3) changes in services such as health insurance coverage change, (4) the introduction of new medical technologies, and (5) the use of electronic health records (EHRs). Ongoing societal changes have led to considerable diversification in the organization, financing, and technological delivery of ambulatory medical care. This diversification is evidenced by the proliferation of insurance and benefit alternatives for individuals, the development of new forms of physician group practices and practice arrangements (such as office-based practices owned by hospitals), and growth in the number of alternative sites of care.

Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. Since more than 65% of ambulatory medical care visits occur in physician offices, NAMCS provides data on the majority of ambulatory medical care services. In addition to health care provided in physician offices and outpatient and emergency departments, health centers (HCs, formerly referred to as community health centers) play an important role in the health care community by providing care to medically underserved populations. HCs serve approximately 29 million individuals throughout the United States.

This revision seeks approval to adjust the HC sample size. In 2021, the sample size will be reduced to 50 HCs, and in 2022 allocated funds will cover a sample size of 110 HCs. In 2023 the sample size will increase to 115 HCs. Additionally, in the 2021 survey year we will not include the supplemental sample of physicians from which visit data are collected through submission of EHRs, with the approved 2019 sample size. These physicians will be included in subsequent survey years when deemed necessary. The annualized 2021–2023 NAMCS sample size is

projected to be 5,000 office-based physicians and 92 HCs. Questions on the traditional office-base physician survey will be modified for clarification and to keep current with medical practice and terminology. We are also seeking to include the potential for experiments involving physician incentives for some office-based physicians. Beginning in the 2021 survey year, data collection for HCs will transition from manual abstraction to be transmitted through EHRs. A set-up fee will be allotted to sampled HCs to offset the cost of this new data collection method. With this transition, a new HC facility interview will be implemented. The reinterview survey will also be discontinued for HC respondents. Personally identifiable information (PII) will be collected from both the HCs, and physicians who transmit EHR visit data. For both the traditional office-based physicians and HCs, we will continue COVID–19 questions in 2021 and for subsequent data years where information is pertinent. We will also begin to conduct methodological work to improve upon the survey.

CDC requests approval for an estimated 6,819 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Office-based Physicians or Staff (Abstraction)	Physician Induction Interview (2020)	500	1	30/60
HC Executive/Medical Directors	HC Facility Induction Interview (2020)	17	1	30/60
HC Providers	Provider Induction Interview (2020)	52	1	30/60
HC Provider Staff	Pulling, re-filing medical record forms (FR abstracts) (2020).	52	30	1/60
Office-based Physicians (Abstraction) and HC Providers.	Reinterview Study (2020)	33	1	15/60
Office-based Physicians or Staff (Abstraction)	Physician Induction Interview (2021–2023) ...	3,000	1	30/60
	Pulling, re-filing medical record forms (FR abstracts) (2021–2023).	2,000	30	1/60
Office-based Physician Staff (EHR Submission).	PFI (2021–2023)	2,000	1	45/60
	Pulling, re-filing medical record forms (EHR Onboarding) (2021–2023).	2,000	1	60/60
HC Staff	HC Facility Interview (2021–2023)	92	1	45/60
	Prepare and transmit EHR for Visit Data (quarterly) (2021–2023).	92	4	60/60
Office-based Physicians (Abstraction)	Reinterview Study (2021–2023)	250	1	15/60

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.*

[FR Doc. 2021–11318 Filed 5–27–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for Adult Protective Services Funding

Title: American Rescue Plan Act of 2021: Grants to Enhance Adult Protective Services.

Announcement Type: Initial.

Statutory Authority: The statutory authority for grants under this program announcement is contained in the Elder Justice Act Section 2042(b) of Title XX of the Social Security Act [Pub. L. 74–271] [As Amended Through Pub. L. 115–123, Enacted February 9, 2018] as referenced in Section 9301 of the American Rescue Plan Act of 2021 (Pub. L. 117–2).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.747.

DATES: The deadline date for the submission of the American Rescue Plan Act of 2021: Grants to Enhance Adult Protective Services Letter of Assurance is 11:59 p.m. June 28, 2021.

I. Funding Opportunity Description

The Administration for Community Living (ACL) is establishing the “American Rescue Plan Act of 2021: Grants to Enhance Adult Protective Services” funding opportunity in accordance with Section 2042(b) of Subtitle B of Title XX of the Social Security Act, otherwise known as the Elder Justice Act (EJA) as authorized and funded through the American Rescue Plan Act of 2021 (Pub. L. 117–2). In accordance with these statutes, the purpose of this opportunity is to enhance and improve adult protective services provided by states and local units of government. Funds awarded under this opportunity will provide Adult Protective Services (APS) programs in the states and territories with resources to enhance, improve, and expand the ability of APS to investigate allegations of abuse, neglect, and exploitation. Examples of activities consistent with the purposes of the statute include:

- Establishing or enhancing the availability for elder shelters and other emergency, short-term housing and accompanying “wrap-around” services for APS clients;
- Establishing, expanding, or enhancing state-wide and local-level elder justice networks for the purpose of removing bureaucratic obstacles and improving coordination across the many state and local agencies interacting with APS clients who have experienced abuse, neglect, or exploitation;

- Working with tribal adult protective services efforts, such as conducting demonstrations on state-Tribal APS partnerships to better serve tribal elders who experience abuse, neglect, and exploitation, partnering with Tribes within the state to include tribal elder abuse data in the state’s National Adult Maltreatment Reporting System (NAMRS) reporting, and undertaking demonstrations to better understand elder abuse experienced by tribal individuals living in non-tribal communities and served by state APS programs;

- Improving or enhancing existing APS processes for receiving reports, conducting intakes and investigations, planning/providing for services, making case determinations, documenting and closing cases, and continuous quality improvement;

- Improving and supporting remote work, such as the purchase of communications and technology hardware, software, or infrastructure in order to provide adult protective services;

- Improving data collection and reporting at the case worker, local-, and state-levels in a manner that is consistent with the National Adult Maltreatment Reporting System (NAMRS);

- Costs associated with establishing new, or improving existing processes for responding to alleged scams and frauds;

- Costs associated with community outreach;

- Costs associated with providing goods and services to APS clients;

- Acquiring personal protection equipment and supplies;

- Paying for extended hours/over-time for staff, hiring temporary staff, and associated personnel costs;

- Training costs;

- Costs associated with assisting APS clients secure the least restrictive option for emergency or alternative housing, and with obtaining, providing, or coordinating with care transitions as appropriate.

In addition, grantees will be required to create a 3–5 year plan for improving and enhancing their APS system at the state and local level, and submit it to ACL within 6-months of the award date. ACL will provide all grantees with in-depth technical assistance and tools to support grantees in planning for and developing the plans.

Awards authorized under the EJA Section 2042(b) shall be provided to the agency or unit of state government having the legal responsibility for providing adult protective services within the state. Funding under this opportunity may be used to serve any

APS client who meets their state’s statutory or regulatory criteria for client eligibility for APS services in the state. This funding must supplement and not supplant existing funding for APS provided by states and local units of government. Additionally, award recipients will be required to submit semi-annual federal financial reports and annual program reports related to the activities performed.

II. Award Information

A. Eligible Entity

The eligible entity for these awards is the agency or unit of state government legally responsible for providing adult protective services in each state and territory (EJA Section 2042(b)(3)(B)).

B. Funding Instrument Type

These awards will be made in the form of formula grants to the agencies and units of state government with the legal responsibility to provide adult protective services.

C. Anticipated Total Funding per Budget Period

Under this program announcement, ACL intends to make grant awards to each state, territory, and the District of Columbia. Funding will be distributed through the formula identified in Section 2042(b) of the Elder Justice Act. The amounts allocated are based upon the proportion of elders living in each state and territory, as defined in statute, and will be distributed based on the formula. There are no cost-sharing nor match requirements.

Awards made under this announcement have an estimated start date of August 1, 2021 and an estimated end date of September 30, 2023. The total available funding for this opportunity is \$86,060,000. Below are the projected award amounts:

State/territory	Projected amount
Alabama	\$1,253,632
Alaska	645,450
Arizona	1,865,376
Arkansas	761,967
California	8,687,314
Colorado	1,274,252
Connecticut	937,381
Delaware	645,450
Dist. of Columbia	129,080
Florida	6,321,959
Georgia	2,283,242
Hawaii	645,450
Idaho	645,450
Illinois	3,047,328
Indiana	1,618,610
Iowa	811,164
Kansas	704,707
Kentucky	1,115,193
Louisiana	1,110,372

State/territory	Projected amount
Maine	645,450
Maryland	1,440,997
Massachusetts	1,735,714
Michigan	2,629,735
Minnesota	1,376,357
Mississippi	722,828
Missouri	1,569,549
Montana	645,450
Nebraska	645,450
Nevada	729,486
New Hampshire	645,450
New Jersey	2,201,359
New Mexico	645,450
New York	4,864,372
North Carolina	2,579,576
North Dakota	645,450
Ohio	3,042,896
Oklahoma	937,536
Oregon	1,111,411
Pennsylvania	3,520,052
Rhode Island	645,450
South Carolina	1,366,031
South Dakota	645,450
Tennessee	1,688,868
Texas	5,659,858
Utah	645,450
Vermont	645,450
Virginia	2,021,926
Washington	1,799,233
West Virginia	645,450
Wisconsin	1,517,845
Wyoming	645,450
American Samoa	86,060
Guam	86,060
Northern Marianas	86,060
Puerto Rico	951,354
Virgin Islands	86,060

III. Submission Requirements

A. Letter of Assurance

A *Letter of Assurance* is required to be submitted by the eligible entity in order to receive an award. The Letter of Assurance must include the following:

1. Assurance that the award recipient is the agency or unit of state government legally responsible for providing adult protective services in each state and territory.

2. Assurance that funds will supplement and not supplant existing APS funding.

3. Assurance the grantee will reserve a reasonable portion of the funds to create a 3–5 year plan for improving and enhancing their APS system at the state and local level, and that the completed plan will be submitted to ACL within the first 6 months of award.

4. Assurance that funds will be spent in ways consistent with the Elder Justice Act Section 2042(b); Section 9301 of the American Rescue Plan Act of 2021; and guidance provided by ACL, including the examples of activities consistent with the purposes of the authorizing legislation contained in the **Federal Register** Notice:

- Establishing or enhancing the availability for elder shelters and other emergency, short-term housing and accompanying “wrap-around” services;
- Establishing, expanding, or enhancing state-wide and local-level elder justice networks;
- Working with tribal adult protective services efforts;
- Improving or enhancing existing APS processes;
- Improving and supporting remote work;
- Improving data collection and reporting at the case worker, local-, and state-levels in a manner that is consistent with the National Adult Maltreatment Reporting System;
- Establishing new, or improving existing processes for responding to alleged scams and frauds;
- Community outreach;
- Providing goods and services to APS clients;
- Acquiring personal protection equipment and supplies;
- Paying for extended hours/over-time for staff, hiring temporary staff, and associated personnel costs;
- Training;
- Assisting APS clients secure the least restrictive option for emergency or alternative housing, and with obtaining, providing, or coordinating with care transitions as appropriate.

5. Assurance to provide semi-annual federal financial reports and annual program reports related to the activities performed.

B. Initial Spend Plan

An *Initial Spend Plan* must be submitted along with the Letter of Assurance. The Initial Spend Plan should outline how the state/territory intends to spend their allotment in response to the needs and challenges to their APS program. The plan should be consistent with the purpose of the authorizing legislation and the description and examples outlined above. The Initial Spend Plan submitted in response to this opportunity is considered a preliminary framework for how the state/territory will plan to spend these funds. The Initial Spend Plan should have the following format: 3–5 pages in length, double-spaced, with 12 pt font and 1” margins, with a layout of 8.5” x 11” paper.

C. DUNS Number

All grant applicants must obtain and keep current a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number can be obtained from: <https://www.dnb.com/duns-number.html>.

D. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

A. Submission Process

To receive funding, eligible entities must provide a *Letter of Assurance* and an *Initial Spend Plan* containing all the information outlined in Section III A. & B. above.

Letters of Assurance and the Initial Spend Plan should be addressed to: Alison Barkoff, Acting Administrator and Assistant Secretary for Aging, Administration for Community Living, 330 C Street SW, Washington, DC 20201.

Letters of Assurance and the Initial Spend Plan should be submitted electronically via email to aps@acl.hhs.gov.

B. Submission Dates and Times

To receive consideration, Letters of Assurance and the Initial Spend Plan must be submitted by 11:59 p.m. Eastern Time on June 28, 2021. Letters of Assurance and the Initial Spend Plan should be submitted electronically via email to aps@acl.hhs.gov and have an electronic time stamp indicating the date/time submitted.

VII. Agency Contacts

A. Programmatic Issues/Questions

Direct programmatic inquiries to: Stephanie Whittier Eliason, Email: stephanie.whittiereliason@acl.hhs.gov, Phone: 202.795.7467.

B. Fiscal Issues/Questions

Direct fiscal inquiries to: Gina Matrassi, Email: gina.matrassi@acl.hhs.gov, Phone: 202.795.7439.

C. Submission Issues/Questions

Direct inquiries regarding submission of the Letters of Assurance of Initial Spend Plan to aps@acl.hhs.gov. ACL will provide a response within 2 business days.

Dated: May 24, 2021.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2021–11343 Filed 5–27–21; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2021-N-0412]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID-19; Availability**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to BioFire Diagnostics, LLC for the BioFire Respiratory Panel 2.1 (RP2.1). FDA revoked this Authorization on March 17, 2021, under the Federal Food, Drug, and Cosmetic Act (FD&C Act), in consideration of the De Novo classification order for the BioFire Respiratory Panel 2.1 (RP2.1) as a Class II (Special Controls) device under the generic name “Device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test.” The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: The Authorization is revoked as of March 17, 2021.

ADDRESSES: Submit written requests for single copies of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that

office in processing your request or include a fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT:

Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993-0002, 240-402-8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Background**

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub L. 108-276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub L. 113-5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On May 1, 2020, FDA issued an EUA to BioFire Diagnostics, LLC for the BioFire Respiratory Panel 2.1 (RP2.1), subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on July 14, 2020 (85 FR 42407), as required by section 564(h)(1) of the FD&C Act. In response to requests from BioFire Diagnostics, LLC, the EUA was amended on December 22, 2020.

II. EUA Criteria for Issuance No Longer Met

Under section 564(g)(2) of the FD&C Act, the Secretary of Health and Human Services may revoke an EUA if, among

other things, the criteria for issuance are no longer met. On March 17, 2021, FDA revoked the EUA for the BioFire Respiratory Panel 2.1 (RP2.1) because the criteria for issuance were no longer met. Under section 564(c)(3) of the FD&C Act, an EUA may be issued only if FDA concludes there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating the disease or condition. FDA issued a De Novo classification order for the BioFire Respiratory Panel 2.1 (RP2.1) as a Class II (Special Controls) device under the generic name “Device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test” on March 17, 2021, (https://www.accessdata.fda.gov/cdrh_docs/pdf20/DEN200031.pdf). FDA has concluded that this is an adequate, approved, and available alternative to BioFire Diagnostics, LLC’s BioFire Respiratory Panel 2.1 (RP2.1) EUA product for detection and/or diagnosis of the virus that causes COVID-19.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at <https://www.regulations.gov/>.

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for the BioFire Respiratory Panel 2.1 (RP2.1). The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164-01-P



March 17, 2021

Biofire Diagnostics, LLC
Dr. Kristen Kanack
Senior Vice President, Regulatory and Clinical Affairs
515 Colorow Drive
Salt Lake City, Utah 84108

Re: DEN200031

Trade/Device Name: BioFire Respiratory Panel 2.1 (RP2.1)

Regulation Number: 21 CFR 866.3981

Regulation Name: Device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test

Regulatory Class: Class II

Product Code: QOF

Dated: May 18, 2020

Received: May 19, 2020

Dear Dr. Kristen Kanack:

The Center for Devices and Radiological Health (CDRH) of the Food and Drug Administration (FDA) has completed its review of your De Novo request for classification of the BioFire Respiratory Panel 2.1 (RP2.1), a prescription device with the following indications for use:

The BioFire Respiratory Panel 2.1 (RP2.1) is a PCR-based multiplexed nucleic acid test intended for use with the BioFire FilmArray 2.0 or BioFire FilmArray Torch systems for the simultaneous qualitative detection and identification of multiple respiratory viral and bacterial nucleic acids in nasopharyngeal swabs (NPS) obtained from individuals suspected of respiratory tract infections, including COVID-19.

The following organism types and subtypes are identified using the BioFire RP2.1:

- Adenovirus,
- Coronavirus 229E,
- Coronavirus HKU1,
- Coronavirus NL63,
- Coronavirus OC43,
- Severe Acute Respiratory Syndrome Coronavirus (SARS-CoV-2),
- Human Metapneumovirus,
- Human Rhinovirus/Enterovirus,

U.S. Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
www.fda.gov

- Influenza A, including subtypes H1, H1-2009, and H3,
- Influenza B,
- Parainfluenza Virus 1,
- Parainfluenza Virus 2,
- Parainfluenza Virus 3,
- Parainfluenza Virus 4,
- Respiratory Syncytial Virus,
- *Bordetella parapertussis* (IS1001),
- *Bordetella pertussis* (ptxP),
- *Chlamydia pneumoniae*, and
- *Mycoplasma pneumoniae*

Nucleic acids from the respiratory viral and bacterial organisms identified by this test are generally detectable in NPS specimens during the acute phase of infection. The detection and identification of specific viral and bacterial nucleic acids from individuals exhibiting signs and/or symptoms of respiratory infection is indicative of the presence of the identified microorganism and aids in the diagnosis of respiratory infection if used in conjunction with other clinical and epidemiological information. The results of this test should not be used as the sole basis for diagnosis, treatment, or other patient management decisions.

Negative results in the setting of a respiratory illness may be due to infection with pathogens that are not detected by this test, or lower respiratory tract infection that may not be detected by an NPS specimen. Positive results do not rule out coinfection with other organisms. The agent(s) detected by the BioFire RP2.1 may not be the definite cause of disease. Additional laboratory testing (e.g. bacterial and viral culture, immunofluorescence, and radiography) may be necessary when evaluating a patient with possible respiratory tract infection.

Although this letter refers to your product as a device, please be aware that some granted products may instead be combination products. If you have questions on whether your product is a combination product, contact CDRHProductJurisdiction@fda.hhs.gov. FDA concludes that this device should be classified into Class II. This order, therefore, classifies the BioFire Respiratory Panel 2.1 (RP2.1), and substantially equivalent devices of this generic type, into Class II under the generic name Device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test.

FDA identifies this generic type of device as:

Device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test. A device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test is an in vitro diagnostic device intended for the detection and identification of SARS-CoV-2 and other microbial agents when in a multi-target test in human clinical respiratory specimens from patients suspected of respiratory infection who are at risk for exposure or who may have been exposed to these agents. The device is intended to aid in the diagnosis of respiratory infection in conjunction with other clinical, epidemiologic, and laboratory data or other risk factors.

Section 513(f)(2) of the Food, Drug and Cosmetic Act (the FD&C Act) was amended by section 607 of the Food and Drug Administration Safety and Innovation Act (FDASIA) on July 9, 2012. This law provides two options for De Novo classification. First, any person who receives a "not substantially equivalent" (NSE) determination in response to a 510(k) for a device that has not been previously classified under the Act may request FDA to make a risk-based classification of the device under section 513(a)(1) of the Act. On December 13, 2016, the 21st Century Cures Act removed a requirement that a De Novo request be submitted within 30 days of receiving an NSE determination. Alternatively, any person who determines that there is no legally marketed device upon which to base a determination of substantial equivalence may request FDA to make a risk-based classification of the device under section 513(a)(1) of the Act without first submitting a 510(k). FDA shall, within 120 days of receiving such a request, classify the device. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the Federal Register announcing the classification.

On May 19, 2020, FDA received your De Novo requesting classification of the BioFire Respiratory Panel 2.1 (RP2.1). The request was submitted under section 513(f)(2) of the FD&C Act. In order to classify the BioFire Respiratory Panel 2.1 (RP2.1) into class I or II, it is necessary that the proposed class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the De Novo request, FDA has determined that, for the previously stated indications for use, the BioFire Respiratory Panel 2.1 (RP2.1) can be classified in class II with the establishment of special controls for class II. FDA believes that class II (special) controls provide reasonable assurance of the safety and effectiveness of the device type. The identified risks and mitigation measures associated with the device type are summarized in the following table:

Identified Risks to Health	Mitigation Measures
Risk of an inaccurate test result (false positive or false negative result) leading to improper patient management	Certain labeling information, including limitations, warnings, device descriptions, explanation of procedures, and performance information identified in special controls (1), (3), (5), and (6). Use of certain specimen collection devices identified in special control (2). Certain design verification and validation, documentation of certain analytical studies and clinical studies, risk analysis strategies, and device descriptions identified in special control (4). Testing of characterized viral samples and labeling information identified in special control (7).
Misinterpretation of test results leading to misdiagnosis and associated risk of false test results	Certain labeling information, including limitations, warnings, device descriptions, explanation of procedures, results interpretation information, and performance information identified in special controls (1), (3), and (5). Certain design verification and validation, documentation of certain analytical studies and clinical studies, risk analysis strategies, and device descriptions identified in special control (4).

Identified Risks to Health	Mitigation Measures
Failure to correctly operate the device leading to inaccurate test results	Certain labeling information, including limitations, warnings, device descriptions, explanation of procedures, and performance information identified in special controls (1), (3), (5), and (6). Use of certain specimen collection devices identified in special control (2). Certain design verification and validation, documentation of certain analytical studies and clinical studies, risk analysis strategies, and device descriptions identified in special control (4).

In combination with the general controls of the FD&C Act, the device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test is subject to the following special controls:

1. The intended use in the labeling required under 21 CFR 809.10 must include a description of the following: Analytes and targets the device detects and identifies, the specimen types tested, the results provided to the user, the clinical indications for which the test is to be used, the specific intended population(s), the intended use locations including testing location(s) where the device is to be used (if applicable), and other conditions of use as appropriate.
2. Any sample collection device used must be FDA-cleared, -approved, or -classified as 510(k) exempt (standalone or as part of a test system) for the collection of specimen types claimed by this device; alternatively, the sample collection device must be cleared in a premarket submission as a part of this device.
3. The labeling required under 21 CFR 809.10(b) must include:
 - (i) A detailed device description, including reagents, instruments, ancillary materials, all control elements, and a detailed explanation of the methodology, including all pre-analytical methods for processing of specimens;
 - (ii) Detailed descriptions of the performance characteristics of the device for each specimen type claimed in the intended use based on analytical studies including the following, as applicable: Limit of Detection, inclusivity, cross-reactivity, interfering substances, competitive inhibition, carryover/cross contamination, specimen stability, precision, reproducibility, and clinical studies;
 - (iii) Detailed descriptions of the test procedure(s), the interpretation of test results for clinical specimens, and acceptance criteria for any quality control testing;
 - (iv) A warning statement that viral culture should not be attempted in cases of positive results for SARS-CoV-2 and/or any similar microbial agents unless a facility with an appropriate level of laboratory biosafety (e.g., BSL 3 and BSL 3+, etc.) is available to receive and culture specimens.
 - (v) A prominent statement that device performance has not been established for specimens collected from individuals not identified in the intended use population (e.g., when applicable, that device performance has not been established in individuals without signs or symptoms of respiratory infection).
 - (vi) Limiting statements that indicate that:
 - (A) A negative test result does not preclude the possibility of infection;

- (B) The test results should be interpreted in conjunction with other clinical and laboratory data available to the clinician;
 - (C) There is a risk of incorrect results due to the presence of nucleic acid sequence variants in the targeted pathogens;
 - (D) That positive and negative predictive values are highly dependent on prevalence;
 - (E) Accurate results are dependent on adequate specimen collection, transport, storage, and processing. Failure to observe proper procedures in any one of these steps can lead to incorrect results; and
 - (F) When applicable (e.g., recommended by the Centers for Disease Control and Prevention, by current well-accepted clinical guidelines, or by published peer-reviewed literature), that the clinical performance may be affected by testing a specific clinical subpopulation or for a specific claimed specimen type.
4. Design verification and validation must include:
- (i) Detailed documentation, including performance results, from a clinical study that includes prospective (sequential) samples for each claimed specimen type and, as appropriate, additional characterized clinical samples. The clinical study must be performed on a study population consistent with the intended use population and compare the device performance to results obtained using a comparator that FDA has determined is appropriate. Detailed documentation must include the clinical study protocol (including a predefined statistical analysis plan), study report, testing results, and results of all statistical analyses.
 - (ii) Risk analysis and documentation demonstrating how risk control measures are implemented to address device system hazards, such as Failure Modes Effects Analysis and/or Hazard Analysis. This documentation must include a detailed description of a protocol (including all procedures and methods) for the continuous monitoring, identification, and handling of genetic mutations and/or novel respiratory pathogen isolates or strains (e.g., regular review of published literature and periodic *in silico* analysis of target sequences to detect possible mismatches). All results of this protocol, including any findings, must be documented and must include any additional data analysis that is requested by FDA in response to any performance concerns identified under this section or identified by FDA during routine evaluation. Additionally, if requested by FDA, these evaluations must be submitted to FDA for FDA review within 48 hours of the request. Results that are reasonably interpreted to support the conclusion that novel respiratory pathogen strains or isolates impact the stated expected performance of the device must be sent to FDA immediately.
 - (iii) A detailed description of the identity, phylogenetic relationship, and other recognized characterization of the respiratory pathogen(s) that the device is designed to detect. In addition, detailed documentation describing how to interpret the device results and other measures that might be needed for a laboratory diagnosis of respiratory infection.
 - (iv) A detailed device description, including device components, ancillary reagents required but not provided, and a detailed explanation of the methodology, including molecular target(s) for each analyte, design of target detection reagents, rationale for target selection, limiting factors of the device (e.g., saturation level of hybridization and maximum amplification and detection cycle number, etc.), internal and external controls, and computational path from collected raw data to reported result (e.g., how collected raw signals are converted into a reported signal and result), as applicable.

- (v) A detailed description of device software, including software applications and hardware-based devices that incorporate software. The detailed description must include documentation of verification, validation, and hazard analysis and risk assessment activities, including an assessment of the impact of threats and vulnerabilities on device functionality and end users/patients as part of cybersecurity review.
 - (vi) For devices intended for the detection and identification of microbial agents for which an FDA recommended reference panel is available, design verification and validation must include the performance results of an analytical study testing the FDA recommended reference panel of characterized samples. Detailed documentation must be kept of that study and its results, including the study protocol, study report for the proposed intended use, testing results, and results of all statistical analyses.
 - (vii) For devices with an intended use that includes detection of Influenza A and Influenza B viruses and/or detection and differentiation between the Influenza A virus subtypes in human clinical specimens, the design verification and validation must include a detailed description of the identity, phylogenetic relationship, or other recognized characterization of the Influenza A and B viruses that the device is designed to detect, a description of how the device results might be used in a diagnostic algorithm and other measures that might be needed for a laboratory identification of Influenza A or B virus and of specific Influenza A virus subtypes, and a description of the clinical and epidemiological parameters that are relevant to a patient case diagnosis of Influenza A or B and of specific Influenza A virus subtypes. An evaluation of the device compared to a currently appropriate and FDA accepted comparator method. Detailed documentation must be kept of that study and its results, including the study protocol, study report for the proposed intended use, testing results, and results of all statistical analyses.
5. When applicable, performance results of the analytical study testing the FDA recommended reference panel described in paragraph (b)(4)(vi) of this section must be included in the device's labeling under 21 CFR 809.10(b).
6. For devices with an intended use that includes detection of Influenza A and Influenza B viruses and/or detection and differentiation between the Influenza A virus subtypes in human clinical specimens in addition to detection of SARS-CoV-2 and similar microbial agents, the required labeling under 21 CFR 809.10(b) must include the following:
- (i) Where applicable, a limiting statement that performance characteristics for Influenza A were established when Influenza A/H3 and A/H1-2009 (or other pertinent Influenza A subtypes) were the predominant Influenza A viruses in circulation.
 - (ii) Where applicable, a warning statement that reads if infection with a novel Influenza A virus is suspected based on current clinical and epidemiological screening criteria recommended by public health authorities, specimens should be collected with appropriate infection control precautions for novel virulent influenza viruses and sent to state or local health departments for testing. Viral culture should not be attempted in these cases unless a BSL 3+ facility is available to receive and culture specimens.
 - (iii) Where the device results interpretation involves combining the outputs of several targets to get the final results, such as a device that both detects Influenza A and differentiates all known Influenza A subtypes that are currently circulating, the device's labeling must include a clear interpretation instruction for all valid and invalid output combinations, and recommendations for any required follow up actions or retesting in the case of an unusual or unexpected device result.

- (iv) A limiting statement that if a specimen yields a positive result for Influenza A, but produces negative test results for all specific influenza A subtypes intended to be differentiated (i.e., H1-2009 and H3), this result requires notification of appropriate local, state, or federal public health authorities to determine necessary measures for verification and to further determine whether the specimen represents a novel strain of Influenza A.
- 7. If one of the actions listed at section 564(b)(1)(A)–(D) of the Federal Food, Drug, and Cosmetic Act occurs with respect to an influenza viral strain, or if the Secretary of Health and Human Services (HHS) determines, under section 319(a) of the Public Health Service Act, that a disease or disorder presents a public health emergency, or that a public health emergency otherwise exists, with respect to an influenza viral strain:
 - (i) Within 30 days from the date that FDA notifies manufacturers that characterized viral samples are available for test evaluation, the manufacturer must have testing performed on the device with those influenza viral samples in accordance with a standardized protocol considered and determined by FDA to be acceptable and appropriate.
 - (ii) Within 60 days from the date that FDA notifies manufacturers that characterized influenza viral samples are available for test evaluation and continuing until 3 years from that date, the results of the influenza emergency analytical reactivity testing, including the detailed information for the virus tested as described in the certificate of authentication, must be included as part of the device's labeling in a tabular format, either by:
 - (A) Placing the results directly in the device's labeling required under 21 CFR 809.10(b) that accompanies the device in a separate section of the labeling where analytical reactivity testing data can be found, but separate from the annual analytical reactivity testing results; or
 - (B) In a section of the device's label or in other labeling that accompanies the device, prominently providing a hyperlink to the manufacturer's public website where the analytical reactivity testing data can be found. The manufacturer's website, as well as the primary part of the manufacturer's website that discusses the device, must provide a prominently placed hyperlink to the website containing this information and must allow unrestricted viewing access.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device type. FDA has determined premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device type and, therefore, the device is not exempt from the premarket notification requirements of the FD&C Act. Thus, persons who intend to market this device type must submit a premarket notification containing information on the device to detect and identify nucleic acid targets in respiratory specimens from microbial agents that cause the SARS-CoV-2 respiratory infection and other microbial agents when in a multi-target test they intend to market prior to marketing the device.

Please be advised that FDA's decision to grant this De Novo request does not mean that FDA has made a determination that your device complies with other requirements of the FD&C Act or any Federal statutes and regulations administered by other Federal agencies. You must comply with all the FD&C Act's requirements, including, but not limited to: registration and listing (21 CFR Part 807); labeling (21 CFR Parts 801 and 809); medical device reporting (reporting of medical device-related adverse events) (21 CFR 803) for devices or postmarketing safety reporting (21 CFR 4, Subpart B) for combination products (see

DEN200031 - Kristen Kanack

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<https://www.fda.gov/combination-products/guidance-regulatory-information/postmarketing-safety-reporting-combination-products>); good manufacturing practice requirements as set forth in the quality systems (QS) regulation (21 CFR Part 820) for devices or current good manufacturing practices (21 CFR 4, Subpart A) for combination products; and if applicable, the electronic product radiation control provisions (Sections 531-542 of the FD&C Act); 21 CFR 1000-1050.

A notice announcing this classification order will be published in the Federal Register. A copy of this order and supporting documentation are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852 and are available for inspection between 9 a.m. and 4 p.m., Monday through Friday.

As a result of this order, you may immediately market your device as described in the De Novo request, subject to the general control provisions of the FD&C Act and the special controls identified in this order.

For comprehensive regulatory information about medical devices and radiation-emitting products, please see Device Advice (<https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance>) and CDRH Learn (<https://www.fda.gov/training-and-continuing-education/cdrh-learn>). Additionally, you may contact the Division of Industry and Consumer Education (DICE) to ask a question about a specific regulatory topic. See the DICE website (<https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/contact-us-division-industry-and-consumer-education-dice>) for more information or contact DICE by email (DICE@fda.hhs.gov) or phone (1-800-638-2041 or 301-796-7100).

If you have any questions concerning the contents of the letter, please contact Ricky Soong at 301-348-1894.

Sincerely,

Uwe Scherf -S

Uwe Scherf, M.Sc., Ph.D.
Director
Division of Microbiology Devices
OHT7: Office of In Vitro Diagnostics
and Radiological Health
Office of Product Evaluation and Quality
Center for Devices and Radiological Health

Dated: May 24, 2021.

Lauren K. Roth,
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-11385 Filed 5-27-21; 8:45 am]

BILLING CODE 4164-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-N-0455]

Revocation of Authorization of Emergency Use of a Medical Device During COVID-19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Battelle Memorial Institute for the Battelle Critical Care Decontamination System. FDA revoked the Authorization on April 30, 2021,

under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by Battelle Memorial Institute on April 2, 2021. The revocation, which includes an explanation of the reasons for the revocation, is reprinted in this document.

DATES: The Authorization for the Battelle Critical Care Decontamination System is revoked as of April 30, 2021.

ADDRESSES: Submit written requests for a single copy of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993-0002,

240-402-8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On March 28, 2020, FDA issued the Authorization to Battelle Memorial Institute for the Battelle Critical Care Decontamination System. Notice of the issuance of the Authorization was published in the **Federal Register** on June 5, 2020 (85 FR 34638), as required by section 564(h)(1) of the FD&C Act. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no

longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Request for a Medical Device During COVID-19

On April 2, 2021, Battelle Memorial Institute requested the revocation of, and on April 30, 2021, FDA revoked, the Authorization for the Battelle Critical Care Decontamination System. Because Battelle Memorial Institute notified FDA

that it has ceased operations and associated activities and requests withdrawal of the Authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at <https://www.regulations.gov/> and <https://www.fda.gov/media/148132/download>.

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA for the Battelle Critical Care Decontamination System. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164-01-P



April 30, 2021

Mr. Jeff Rose
Battelle Memorial Institute
505 King Avenue
Columbus, OH 43201

Re: Revocation of EUA200210

Dear Mr. Rose:

This letter is in response to Battelle Memorial Institute's (Battelle's) request dated April 2, 2021, that the U.S. Food and Drug Administration (FDA) withdraw the Emergency Use Authorization (EUA200210) for the Battelle Critical Care Decontamination System (hereafter referred to as "Battelle Decontamination System") issued on March 28, 2020, and revised and reissued on March 29, 2020, June 6, 2020, and January 21, 2021. In its request, Battelle confirmed that it has ceased operation of all Battelle Decontamination System sites as well as associated marketing activities.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when the criteria under section 564(c) of the Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Battelle has notified FDA that it has ceased operations and associated activities and requests withdrawal of the authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization.

Accordingly, FDA hereby revokes EUA200210 for the Battelle Decontamination System, pursuant to and section 564(g)(2)(C) of the Act. As of the date of this letter, the Battelle Decontamination System is no longer authorized for emergency use by FDA.

FDA encourages Battelle to inform its customers of this revocation.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: May 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–11384 Filed 5–27–21; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; NEI Clinical Trials and Clinical Applications I.

Date: June 24, 2021.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20817, 240–276–5864, jennifer.schiltz@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 24, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11294 Filed 5–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; NEI Clinical Trials and Clinical Applications II.

Date: June 28, 2021.

Time: 10:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20817, 240–276–5864, jennifer.schiltz@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 24, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11293 Filed 5–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act; Plans of Action To Respond to COVID–19

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) announces the formation of four Plans of Action under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic: Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID–19; and Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID–19. This notice contains the text of all four Plans of Action.

FOR FURTHER INFORMATION CONTACT:

Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at OB3I@fema.dhs.gov or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

The Defense Production Act (DPA), 50 U.S.C. 4501 *et seq.*, authorizes the making of “voluntary agreements and plans of action” with, among others, representatives of industry and business to help provide for the national defense.¹ The President’s authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread of COVID–19 within the United States in Executive Order 13911.² The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.³

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission and after requesting and considering public comments, FEMA completed and published in the **Federal Register** a “Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a

¹ 50 U.S.C. 4558(c)(1).

² 85 FR 18403 (Apr. 1, 2020).

³ DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

Pandemic” (Voluntary Agreement).⁴ Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Voluntary Agreement may be used to prepare for or respond to any pandemic, including COVID-19, during that time.

FEMA is now activating four Plans of Action under the Voluntary Agreement:

(1) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID-19. The primary goal of the Plan is to create a mechanism to immediately meet exigent requests for Diagnostic Test Kits and other Testing Components anywhere in the Nation and to ensure that actions to support stockpiling of Diagnostic Test Kits and other Testing Components do not interfere with immediate requirements.

(2) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID-19. The primary goal of the Plan is to create a mechanism to immediately meet exigent requests for Drug Products, Drug Substances, and Associated Medical Devices anywhere in the Nation and to ensure that actions to support Drug Products, Drug Substances, and Associated Medical Devices stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential recipients of Drug Products, Drug Substances, and Associated Medical Devices.

(3) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID-19. The primary goal of the Plan is to create a mechanism to immediately meet exigent Medical Device requests anywhere in the Nation and to ensure that actions to support Medical Device stockpiling and reserves do not interfere with immediate

requirements that would result in an unacceptable risk to healthcare providers or other potential Medical Device recipients.

(4) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID-19. The primary purpose of this Plan is to create a mechanism to immediately meet exigent Medical Gas requests anywhere in the Nation and to ensure that actions to support Medical Gas stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Medical Gas recipients.

Appropriate members of the private sector will be invited to join each Plan of Action as Sub-Committee Participants. Provided that a Sub-Committee Participant acts in accordance with the terms of a Plan, the DPA affords the Participant a defense to civil and criminal action brought under the antitrust laws (or any similar law of any state) for actions taken to carry out the Plan. The Plans are designed to foster a close working relationship among FEMA, HHS, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has made the required finding for each Plan of Action that the purposes of section 708(c)(1) of the DPA cannot reasonably be achieved without each Plan of Action, or by Plans of Action having less anticompetitive effects than the proposed Plans of Action. Pursuant to section 708(f)(1)(B) of the DPA, the Department of Justice separately published the findings for these Plans of Action in the **Federal Register**. The FEMA Administrator has certified in writing that each Plan of Action is necessary to help provide for the national defense.

Text of the Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and Other Testing Components To Respond to COVID-19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Plan of Action To Establish a National Strategy for the Manufacture, Allocation and Distribution of Diagnostic Test Kits and Other Testing Components To Respond to COVID-19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Preface

Pursuant to section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4558), the Federal Emergency Management Agency (FEMA) Administrator (Administrator), after consultation with the Secretary of the Department of Health and Human Services (HHS), the Attorney General of the United States (Attorney General), and the Chair of the Federal Trade Commission (FTC), developed a Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement), 85 FR 50035 (August 17, 2020). The Voluntary Agreement, which operates through a series of Plans of Action, maximizes the manufacture and efficient distribution of Critical Healthcare Resources nationwide to respond to a pandemic by establishing unity of effort between Participants and the Federal Government for integrated coordination, planning, information sharing with FEMA, as authorized by FEMA, and allocation and distribution of Critical Healthcare Resources.

This document establishes a Plan of Action (Plan) to Establish a National Strategy for the Manufacture, Allocation and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID-19. This Plan will be implemented under the Voluntary Agreement by several Sub-Committees.

(1) Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components,

(2) Sub-Committee for Lab-Based Testing,

(3) Sub-Committee for Point-of-Care Testing,

(4) Sub-Committee for At-Home Testing,

⁴ Voluntary Agreement Under Section 708 of the Defense Production Act; Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic, 85 FR 50035, 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the Voluntary Agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

(5) Sub-Committee for Swabs (Nasal & Throat), and

(6) Sub-Committee for Transfer Media and Pipette Tips.

The Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components will be formed first. FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of item needed for COVID-19 testing; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID-19

Diagnostic Test Kits and other Testing Components.

The purpose of the Plan is to maximize the manufacture and efficient distribution of Diagnostic Test Kits and other Testing Components and create a prioritization protocol for End-Users based upon their demonstrated or projected requirements including geographic and regional circumstances. The primary goal of the Plan is to create a mechanism to immediately meet exigent requests for Diagnostic Test Kits and other Testing Components anywhere in the Nation and to ensure that actions to support stockpiling of Diagnostic Test Kits and other Testing

Components do not interfere with immediate requirements. When the requirements of the Plan are met, it affords Sub-Committee Participants defenses to civil and criminal actions brought under the antitrust laws (or any similar law of any state) for actions taken within the scope of the Plan. The Plan is designed to foster a close working relationship among FEMA, HHS, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

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I. Purpose

A pandemic may present conditions that pose a direct threat to the national defense of the United States or its preparedness programs such that, pursuant to DPA section 708(c)(1), an agreement to collectively coordinate, plan, and collaborate for the manufacture and distribution of Diagnostic Test Kits and other Testing Components is necessary for the national defense. This Plan of Action to Establish a National Strategy for the Manufacture, Allocation and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID-19 is established under the Voluntary Agreement and establishes six Sub-Committees to oversee and implement the Plan. The Plan and Sub-Committees will optimize the manufacture and the efficient distribution of selected types of Diagnostic Test Kits and other Testing Components and create a prioritization protocol for End-Users based upon their demonstrated or projected requirements.

II. Authorities

Section 708, Defense Production Act (50 U.S.C. 4558); sections 402(2) & 501(b), Robert T. Stafford Disaster Relief

and Emergency Assistance Act (42 U.S.C. 5121–5207); sections 503(b)(2)(B) & 504(a)(10) & (16) of the Homeland Security Act of 2002 (6 U.S.C. 313(b)(2)(B), 314(a)(10) & (16)); sections 201, 301, National Emergencies Act (50 U.S.C. 1601 *et seq.*); section 319, Public Health Service Act (42 U.S.C. 247d); Executive Order (E.O.) 13911, 85 FR 18403 (March 27, 2020); Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use, 85 FR 20195 (April 10, 2020). Pursuant to DPA section 708(f)(1)(A), the Administrator certifies that this Plan is necessary for the national defense.

III. General Provisions

A. Definitions

Administrator

The FEMA Administrator is the Sponsor of the Voluntary Agreement. Pursuant to a delegation or redelegation of the functions given to the President by DPA section 708, the Administrator proposes and provides for the development and carrying out of the Voluntary Agreement, including through the development and implementation of Plans of Action. The Administrator is responsible for

carrying out all duties and responsibilities required by 50 U.S.C. 4558 and 44 CFR part 332 and for appointing one or more Chairpersons to manage and administer the Committee and all Sub-Committees formed to carry out the Voluntary Agreement.

Agreement

The Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement).

Allocation

The process of determining and directing the relative distribution among one or more competing requests from End-Users for the same Diagnostic Test Kits and other Testing Components. Through the Allocation process, FEMA—with participation from Sub-Committee Participants—will assess the actual needs of End-Users and determine how to divide the available and projected supply of Diagnostic Test Kits and other Testing Components to minimize impacts to life, safety, and economic disruption associated with shortages of Diagnostic Test Kits and other Testing Components. Allocation will take place only under Exigent

Circumstances. FEMA retains decision-making authority for all Allocation under this Plan.

Attendees

Subject matter experts, invited by the Chairperson or a Sub-Committee Chairperson to attend meetings authorized under the Voluntary Agreement or this Plan, to provide technical advice or to represent other government agencies or interested parties. Invitations to attendees will be extended as required for Committee or Sub-Committee meetings and deliberations.

Chairperson

FEMA senior executive(s), appointed by the Administrator, to chair the Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic (Committee). The Chairperson shall be responsible for the overall management and administration of the Committee, the Voluntary Agreement, and Plans of Action developed under the Voluntary Agreement while remaining under the supervision of the Administrator; shall initiate, or approve in advance, each meeting held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the Voluntary Agreement; appoint one or more co-Chairpersons to chair the Committee, and otherwise shall carry out all duties and responsibilities assigned to him. With the approval of the Administrator, the Chairperson may create one or more Sub-Committees, and may appoint one or more Sub-Committee Chairpersons to chair the Sub-Committees, as appropriate.

Committee

Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic established under the Voluntary Agreement.

Competitively Sensitive Information

Competitively Sensitive Information that is shared pursuant to this Plan may include any Document or other tangible thing or oral transmission that contains financial, business, commercial, scientific, technical, economic, or engineering information or data, including, but not limited to

- financial statements and data,
- customer and supplier lists,
- price and other terms of sale to customers,
- sales records, projections and forecasts,
- inventory levels,
- capacity and capacity utilization,
- cost information,

- sourcing and procurement information,
- manufacturing and production information,
- delivery and shipping information,
- systems and data designs, and
- methods, techniques, processes, procedures, programs, codes, or similar information,

whether tangible or intangible, and regardless of the method of storage, compilation, or recordation, if the owner thereof has taken reasonable measures to protect the information from disclosure to the public or competitors. These measures may be evidenced by marking or labeling the items as “competitively sensitive information” during submission to FEMA or in the Participant’s customary and existing treatment of such information (regardless of labeling).

All Competitively Sensitive Information provided by a Sub-Committee Participant as described herein is deemed Competitively Sensitive Information, except for Information that:

- a. Is published or has been made publicly available at the time of disclosure by the Sub-Committee Participant;
- b. was in the possession of, or was lawfully and readily available to, FEMA from another source at the time of disclosure without breaching any obligation of confidentiality applicable to the other source; or
- c. was independently developed or acquired without reference to or reliance upon the Sub-Committee Participant’s Competitively Sensitive Information;

Where information deemed Competitively Sensitive Information is required to be disclosed by law, regulation, or court order, the “Competitively Sensitive” (or substantially similar) label will continue to attach to all information and portion(s) of documents that are not made public through the required disclosure.

Diagnostic Test Kit

Defined as any “drug” or “device” under the United States Food, Drug, and Cosmetic Act, 21 U.S.C. 321(g) or (h), respectively, used for detection or identification of the novel coronavirus in any individual.

Document

Any information, on paper or in electronic/audio/visual format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Participant and used or shared in the

course of participation in the Voluntary Agreement or a subsequent Plan of Action.

End-User

This includes all direct and ancillary medical support including, but not limited to, hospitals, independent healthcare providers, nursing homes, medical laboratories, independent physician offices, first responders, alternate care facilities and the general public that reasonably represents the totality of the nation’s response to COVID-19.

Exigent Circumstances

As determined by the Chairperson, the actual or forecasted shortage of a particular type of Diagnostic Test Kit or other Testing Component which likely cannot be fulfilled via usual market mechanisms for an acute, critical time period, and where immediate and substantial harm is projected to occur from lack of intervention.

Pandemic

A Pandemic is defined as an epidemic that has spread to human populations across a large geographic area that is subject to one or more declarations under the National Emergencies Act, the Public Health Service Act, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or if the Administrator determines that one or more declarations is likely to occur and the epidemic poses a direct threat to the national defense or its preparedness programs. For example, Coronavirus Disease 2019 (COVID-19).

Participant

An individual, partnership, corporation, association, or private organization, other than a federal agency, that has substantive capabilities, resources or expertise to carry out the purpose of the Voluntary Agreement, that has been specifically invited to participate in the Voluntary Agreement by the Chairperson, and that has applied and agreed to the terms of the Voluntary Agreement. “Participant” includes a corporate or non-corporate entity entering into the Voluntary Agreement and all subsidiaries and affiliates of that entity in which that entity has 50 percent or more control either by stock ownership, board majority, or otherwise. The Administrator may invite Participants to join the Voluntary Agreement at any time during its effective period.

Plan of Action (Plan)

This document. A documented method, pursuant to 50 U.S.C.

4558(b)(2), proposed by FEMA to implement a particular set of activities under the Voluntary Agreement, through a Sub-Committee focused on a particular Critical Healthcare Resource, or pandemic response workstream or functional area necessary for the national defense.

Plan of Action Agreement

A separate commitment made by Participants upon invitation and agreement to participate in a Plan of Action as part of one or more Sub-Committees. Completing the Plan of Action Agreement confers responsibilities on the Participant consistent with those articulated in the Plan and affords Participants a defense against antitrust claims under section 708 for actions taken to develop or carry out the Plan and the appropriate Sub-Committee(s), as described in Section IV below.

Representatives

The representatives the Administrator identifies and invites to the Committee from FEMA, HHS, and other federal agencies with equities in this Plan, and empowered to speak on behalf of their agencies' interests. The Attorney General and the Chair of the FTC, or their delegates, may also attend any meeting as a Representative.

Sub-Committee

A body formed by the Administrator from select Participants to implement a Plan of Action.

Sub-Committee Chairperson

FEMA executive, appointed by the Chairperson, to chair a Sub-Committee to implement a Plan of Action. The Sub-Committee Chairperson shall be responsible for the overall management and administration of the Sub-Committee in furtherance of this Plan while remaining under the supervision of the Administrator and the Chairperson.

Sub-Committee Members

Collectively the Sub-Committee Chairperson(s), Representatives, and Sub-Committee Participants. Jointly responsible developing and executing this Plan.

Sub-Committee Participant

A subset of Participants of the Committee, that have been specifically invited to participate in a Sub-Committee by the Sub-Committee Chairperson, and that have applied and agreed to the terms of this Plan and signed the Plan of Action Agreement. The Sub-Committee Chairperson may

invite Participants in the Committee to join a Sub-Committee as a Sub-Committee Participant at any time during the Plan's effective period.

Testing Components

Defined as any article needed to support the transportation, storage, distribution, or administration of a Diagnostic Test Kit or subsequent result. Common Testing Components include collection swabs, transport media and pipette tips, but other associated materials may be included, if and as appropriate.

B. Plan of Action Participation

This Plan will be implemented under the Voluntary Agreement by one or more Sub-Committees.

(1) Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components,

(2) Sub-Committee for Lab-Based Testing,

(3) Sub-Committee for Point-of-Care Testing,

(4) Sub-Committee for At-Home Testing,

(5) Sub-Committee for Swabs (Nasal & Throat), and

(6) Sub-Committee for Transfer Media and Pipette Tips.

The Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components will be formed first. FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of item needed for COVID-19 testing; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components.

Each Sub-Committee will consist of the (1) Sub-Committee Chairperson(s), (2) Representatives from FEMA, HHS, the Department of Justice (DOJ), and other federal agencies with equities in this Plan, and (3) Sub-Committee Participants that have substantive capabilities, resources or expertise to carry out the purpose of this Plan and have signed the Plan of Action Agreement. The Chairperson shall invite Sub-Committee Participants who, in his or her determination, are reasonably representative of the appropriate industry or segment of such industry. Other Attendees—invited by the Sub-Committee Chairperson as subject matter experts to provide technical advice or to represent the interests of other government agencies or interested parties—may also participate in Sub-

Committee meetings. The naming of these Sub-Committees does not commit the Administrator to creating them unless and until circumstances dictate.

C. Effective Date and Duration of Participation

This Plan is effective immediately upon satisfaction of the requirements of DPA section 708(f)(1). This Plan shall remain in effect until terminated in accordance with 44 CFR 332.4. It shall be effective for no more than five (5) years from August 17, 2020, when the requirements of DPA section 708(f)(1) were satisfied for the Voluntary Agreement, unless otherwise terminated pursuant to DPA section 708(h)(9) and 44 CFR 332.4 or extended as set forth in DPA section 708(f)(2). No action may take place under this Plan until it is activated, as described in Section III(E), below.

D. Withdrawal

Participation in the Plan is voluntary, as is the acceptance of most obligations under the Plan. Sub-Committee Participants may withdraw from this Plan or from an individual Sub-Committee at any point, subject to the fulfillment of obligations previously agreed upon by the Participant prior to the date of withdrawal. Note that the obligations outlined in V.B regarding information management and associated responsibilities apply once a party has shared or received information through a Sub-Committee and remain in place after the party's withdrawal from the Sub-Committee or Plan. If a Sub-Committee Participant indicates an intent to withdraw from the Plan due to a modification or amendment of the Plan (described below), the Sub-Committee Participant will not be required to perform actions directed by that modification or amendment. *Withdrawal from the Plan will automatically trigger withdrawal from all Sub-Committees; however, a Participant may withdraw from a Sub-Committee without also withdrawing from the Plan or other Sub-Committees.* To withdraw from the Plan or from an individual Sub-Committee, a Participant must provide written notice to the Administrator at least fifteen (15) calendar days prior to the effective date of that Sub-Committee Participant's withdrawal specifying the scope of withdrawal. Following receipt of such notice, the Administrator will inform the other Sub-Committee Participants of the date and the scope of the withdrawal.

Upon the effective date of the withdrawal from the Plan, the Sub-Committee Participant must cease all

activities under the Plan. Upon the effective date of the withdrawal from one or more Sub-Committee(s), the Sub-Committee Participant must cease all activities under the Plan that pertain to the withdrawn Sub-Committee(s).

E. Plan of Action Activation and Deactivation

The Administrator, in consultation with the Chairperson and Sub-Committee Chairperson, will invite a select group of Participants in the Voluntary Agreement to form the following Sub-Committees, beginning with the Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components, which will be responsible for implementing this Plan.

(1) Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components,

(2) Sub-Committee for Lab-Based Testing,

(3) Sub-Committee for Point-of-Care Testing,

(4) Sub-Committee for At-Home Testing,

(5) Sub-Committee for Swabs (Nasal & Throat), and

(6) Sub-Committee for Transfer Media and Pipette Tips.

The Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components will be formed first. FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of item needed for COVID-19 testing; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID-19 Diagnostic Test Kits and other Testing Components.

This Plan will be activated for each invited Participant when the Participant executes a Plan of Action Agreement, and a Participant may not participate in a Sub-Committee until the Plan of Action Agreement is executed. Participants will be invited to join this Plan at the discretion of the Chairperson or the Sponsor to the Voluntary Agreement. Participants will be further invited to attend specific meetings of one or more Sub-Committees at the discretion of the Chairperson.

F. Rules and Regulations

Sub-Committee Participants acknowledge and agree to comply with all provisions of DPA section 708, as amended, and regulations related thereto which are promulgated by FEMA, the Department of Homeland

Security, HHS, the Attorney General, and the FTC. FEMA has promulgated standards and procedures pertaining to voluntary agreements in 44 CFR part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

G. Modification and Amendment

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may terminate or modify, in writing, this Plan at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may terminate or modify, in writing, this Plan at any time. Sub-Committee Participants may propose modifications or amendments to the Plan or to the Sub-Committees at any time.

Where possible, material modifications to the Plan or a Sub-Committee will be subject to a 30-calendar day delayed implementation and opportunity for notice and comment by Sub-Committee Participants to the Chairperson. This delayed implementation period may be shortened or eliminated if the Administrator deems it necessary. The Administrator shall inform Sub-Committee Participants of modifications or amendments to the Plan or to the Sub-Committees as they are proposed and issued.

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may remove Sub-Committee Participants from the Plan or from a Sub-Committee at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may remove Sub-Committee Participants from this Plan or from a Sub-Committee at any time. If a Participant is removed from the Plan or from a Sub-Committee, the Participant may request written notice of the reasons for removal from the Chairperson, who shall provide such notice in a reasonable time period.

H. Expenses

Participation in this Plan or in a Sub-Committee does not confer funds to Sub-Committee Participants, nor does it limit or prohibit any pre-existing source of funds. Unless otherwise specified, all expenses, administrative or otherwise, incurred by Sub-Committee Participants associated with participation in this Plan or a Sub-Committee shall be borne exclusively by the Sub-Committee Participants.

I. Record Keeping

Each Sub-Committee Chairperson shall have primary responsibility for

maintaining records in accordance with 44 CFR part 332 and shall be the official custodian of records related to carrying out this Plan. Each Sub-Committee Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Sub-Committee Participants or with any other member of the Sub-Committee, including drafts, related to the carrying out of this Plan or incorporating data or information received in the course of carrying out this Plan. Each Sub-Committee Participant agrees to produce to the Administrator, the Attorney General, and the Chair of the FTC upon request any item that this section requires the Participant to maintain. Any record maintained in accordance with 44 CFR part 332 shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with DPA section 705(d), and 44 CFR 332.5.

IV. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

This defense shall not apply to any actions taken after the termination of this Plan. Immediately upon modification of this Plan, no defense to antitrust claims under Section 708 shall be available to any subsequent action that is beyond the scope of the modified Plan. The Sub-Committee Participant asserting the defense bears the burden of proof to establish the elements of the defense. The defense shall not be

available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

V. Terms and Conditions

As the sponsoring agency, FEMA will maintain oversight over Sub-Committee activities and direct and supervise actions taken to carry out this Plan, including by retaining decision-making authority over actions taken pursuant to the Plan to ensure such actions are necessary to address a direct threat to the national defense. The Attorney General and the Chair of the FTC will monitor activities of the Sub-Committees to ensure they execute their responsibilities in a manner consistent with this Plan and their actions have the least anticompetitive effects possible.

A. Plan of Action Execution

This Plan will be used to support the following objectives to respond to a Pandemic by maximizing the manufacture and efficient distribution of selected types of Diagnostic Test Kits and other Testing Components and creating a prioritization protocol for End-Users based upon their demonstrated or projected requirements. Each Sub-Committee will undertake the following Objectives for the Diagnostic Test Kits and other Testing Components within its area of jurisdiction.

1. Objectives

(1) Optimize the timely production of sufficient quantities of Diagnostic Test Kits and other Testing Components, as part of the overall national strategy, to reduce transmission of COVID-19 and mitigate the impacts caused by it.

(2) Identify and encourage the development of Diagnostic Test Kits and Testing Components that can identify more than one illness (e.g., flu, strep throat or other bacterial infections, common cold, seasonal allergies, and COVID-19).

(3) Identify and encourage the development of Diagnostic Test Kits and Testing Components that can mitigate supply chain constraints, by leveraging new technologies and different components.

(4) Ensure Diagnostic Test Kits and other Testing Components are distributed effectively and equitably across the whole community nationally based on necessity and risk.

(5) Balance restoration and maintenance of the nation's stockpile of Diagnostic Test Kits and other Testing Components with near-term requirements.

(6) Establish a process for FEMA Allocation of Diagnostic Test Kits and other Testing Components nationwide.

(7) Evaluate supply chain components to determine national vulnerabilities and propose corrective actions to improve resiliency in the manufacture and distribution of Diagnostic Test Kits and other Testing Components.

(8) Ensure ongoing competition in the manufacture and distribution of Diagnostic Test Kits and other Testing Components to the greatest extent possible under the DPA.

2. Actions

Sub-Committee Participants may be asked to support these objectives by taking the following specific actions:

(1) Assist the Chairperson in identifying which types of Diagnostic Test Kits and other Testing Components should be included within each Sub-Committee. Identification will be based upon each item's importance to the national response to COVID-19 and whether it can be reasonably inferred, based upon the best evidence available, that the current and projected supply measured against current and projected demand may not adequately meet the requirements of all identified End-Users or regional or geographic areas of the country.

(2) Provide input to the Chairperson in creating a prioritized list of End Users of Diagnostic Test Kits and other Testing Components, by category of End User, for each type of Diagnostic Test Kits and other Testing Components identified by each Sub-Committee, and ascertaining the relative demand and supply of Diagnostic Test Kits and other Testing Components among and within those End User categories. Prioritization shall be decided by the Chairperson, based upon each item's importance, reflecting the consensus views of the Sub-Committee Members that it represents the most effective way to save lives in responding to the COVID-19 pandemic. This list may be updated throughout the life of the Plan based upon either short term or long-term demands. These categories should be considered holistically in terms of the Whole-of-Nation response to COVID-19.

(3) Evaluate the domestic supply of Diagnostic Test Kits and other Testing Components and identify when the expansion of the domestic manufacture of Diagnostic Test Kits and other Testing Components may be necessary, as directed and decided by the Chairperson.

(4) Provide information, assist, and validate, as necessary as decided by the Chairperson, demand projections for

Diagnostic Test Kits and other Testing Components.

(5) Create a process for and collaborate in the evaluation of competing claims for Diagnostic Test Kits and/or other Testing Components from End-Users.

(6) Prepare a general strategy to accomplish the activities listed in V(A)(2)(7) below regarding activities in Exigent Circumstances consistent with the decisions made by the Chairperson.

(7) In Exigent Circumstances, with review and concurrence in all possible instances by DOJ in consultation with FTC:

- Facilitate maximum availability of Diagnostic Test Kits and other Testing Components to the nation by deconflicting overlapping demands from the collective Participants' customer base, as directed and decided by the Chairperson.

- Facilitate maximum availability of Diagnostic Test Kits and other Testing Components to the nation by deconflicting overlapping supply chain demands placed upon Members, as directed and decided by the Chairperson.

- Facilitate the efficient distribution of Diagnostic Test Kits and other Testing Components by deconflicting overlapping distribution chain activities of Members, as directed and decided by the Chairperson.

- Create a process for and collaborate in the Allocation of Diagnostic Test Kits and other Testing Components nationwide consistent with the decisions made by the Chairperson.

(8) Provide data and information necessary to validate the efforts of the Sub-Committee including the actual and planned amounts of Diagnostic Test Kits and other Testing Components to be distributed throughout the Nation, as determined by the Chairperson.

(9) Provide feedback to the Sub-Committee on the outcomes of the collective efforts of the Sub-Committee Members and any impediments or bottlenecks.

(10) Advise the Chairperson whether additional Participants or Attendees should be invited to join this Plan and Sub-Committee.

(11) Carry out other activities regarding Diagnostic Test Kits and other Testing Components as identified by Sub-Committees under this Plan as determined and directed by the Chairperson necessary to address the COVID-19 virus' direct threat to the national defense, where such activities have been reviewed and approved by DOJ and FTC and received concurrence from Sub-Committee members.

B. Information Management and Responsibilities

FEMA will request only that data and information from Sub-Committee Participants that is necessary to meet the objectives of the Plan and consistent with the scope of the relevant Sub-Committees. Upon signing a Plan of Action Agreement for this Plan, FEMA requests that Participants endeavor to cooperate with diligence and speed, and to the extent permissible under this Plan, and share with FEMA data and information necessary to meet the objectives of this Plan.

Sub-Committee Participants agree to share with FEMA the following data with diligence and speed, to the extent permissible under this Plan, and abide by the following guidelines, where feasible and consistent with the data that is owned by each Sub-Committee Participant:

(1) In general, Participants will not be asked to share Competitively Sensitive Information directly with other Participants.

(2) FEMA will only request direct sharing of Competitively Sensitive Information among Participants during Exigent Circumstances where there is a mission critical need or timeline such that sharing only through FEMA is impractical or threatens the outcome of the Plan or Sub-Committee action. Such requests, if made, will be only among Participants whose participation is necessary to meet the objectives of the Plan, will be limited in scope to the greatest extent possible, and will be shared only pursuant to safeguards subject to prior review and audit by DOJ and FTC. Direct sharing of Competitively Sensitive Information with other Participants will be limited in scope and circumstances to the greatest extent possible. Participants may not share Competitively Sensitive Information directly with other Participants unless specifically requested by FEMA, in consultation with DOJ and FTC. All Competitively Sensitive Information delivered to FEMA or to another Sub-Committee Participant shall be delivered by secure means, for example, password-protected or encrypted electronic files or drives with the password/key delivered by separate communication or method or via upload to an appropriately secure web portal as directed by FEMA. All data delivered to the web portal designated by FEMA is deemed to be Competitively Sensitive Information.

(3) To allow FEMA to identify and appropriately protect documents containing Competitively Sensitive Information by the Sub-Committee

Participant providing the documents, the Sub-Committee Participant will make good faith efforts to designate any Competitively Sensitive Information by placing restrictive markings on documents and things considered to be competitively sensitive, the restrictive markings being sufficiently clear in wording and visibility to indicate the restricted nature of the data. The Sub-Committee Participant will identify Competitively Sensitive Information that is disclosed verbally by oral warning. Information designated as competitively sensitive will, to the extent allowed by law, be presumed to constitute confidential or privileged commercial or financial information, and be provided by the Sub-Committee Participant to FEMA with the expectation that it will be kept confidential by both parties, as such terms are understood in accordance with 5 U.S.C. 552(b)(4) of the Freedom of Information Act and federal judicial interpretations of this statute. FEMA agrees that to the extent any information designated as competitively sensitive by a Sub-Committee Participant is responsive to a request for disclosure under the Freedom of Information Act, FEMA will consult with the Sub-Committee Participant and afford the Participant ten (10) working days to object to any disclosure by FEMA.

(4) FEMA will make good faith efforts to appropriately recognize unmarked Documents containing Competitively Sensitive Information as Competitively Sensitive Information. However, FEMA cannot guarantee that all unmarked Documents will be recognized as being Competitively Sensitive Information and protected from disclosure to third parties. If the unmarked Documents have not been disclosed without restriction outside of FEMA, the Sub-Committee Participant may retroactively request to have appropriate designations placed on the Documents. If the unmarked Documents have been disclosed without restriction outside of FEMA, FEMA will, to the extent practicable, remove any requested information from public forums controlled by FEMA and will work promptly to request that a receiving party return or destroy disclosed unmarked Documents if requested by the Sub-Committee Participant.

(5) Competitively Sensitive Information may be used by FEMA, alone or in combination with additional information, including Documents and Competitively Sensitive Information received from third parties, to support FEMA's implementation of this Plan as determined by the Chairperson. In all situations, FEMA will aggregate and

anonymize Competitively Sensitive Information to the greatest extent possible to protect the interests retained by the owners of the data while still allowing the objectives of the Plan and Sub-Committee to be achieved. To the greatest extent possible, such aggregation will render the competitively sensitive nature of the Competitively Sensitive Information of the Sub-Committee Participant no longer recognizable in a commercially sensitive manner, and without sufficient information to enable, by inference or otherwise, attribution to Sub-Committee Participant or its affiliates (as clearly identified and disclosed to FEMA). Any disclosure of Competitively Sensitive Information by FEMA, within or outside a Sub-Committee, will be subject to review and approval by DOJ and FTC.

(6) Except as otherwise expressly permitted by applicable federal law, FEMA shall not disclose any Competitively Sensitive Information or use any Competitively Sensitive Information for any purpose other than in connection with the purposes of this Plan, and FEMA will not sell any Competitively Sensitive Information of any Sub-Committee Participant.

(7) Except as described below, FEMA may disclose Competitively Sensitive Information only to its employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors). Any individual with access to Competitively Sensitive Information will be expected to comply with the terms of this Plan.

a. Information Sharing within the Sub-Committee: FEMA may share Competitively Sensitive Information with Sub-Committee Participants and Federal Representatives of the Plan, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) where there is a need to know and where disclosure is reasonably necessary in furtherance of implementing the Plan. FEMA will aggregate and anonymize data prior to sharing with the Sub-Committee Participants to the greatest extent possible while still allowing the objectives of the Plan to be achieved, and will not share data—particularly to competitors of the submitter—prior to consultation with and approval by the DOJ and FTC.

i. Sub-Committee Participants, when providing Competitively Sensitive Information to FEMA, may request that this Information not be shared with other Sub-Committee Participants. Where these requests are made in good

faith and are reasonable in nature, FEMA will respect these requests to the greatest extent possible and will consult the owner of the data prior to any release made to Sub-Committee Participants.

b. *Restricted Reports.* FEMA may communicate Competitively Sensitive Information to appropriate government officials through Restricted Reports. The information contained in Restricted Reports shall be aggregated and anonymized to the greatest extent possible, while recognizing that these officials may need a certain amount of granularity and specificity of information to appropriately respond to COVID-19. FEMA will aim to aggregate data to the County level, and will not share Restricted Reports prior to consultation and approval from the DOJ and FTC. FEMA may disclose Restricted Reports to relevant White House and Administration officials and State Governors, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) who have a need to know and to whom such disclosure is reasonably necessary solely in furtherance of the implementation of this Plan. FEMA shall take appropriate action (by instructions, agreement, or otherwise) to ensure that receiving parties comply with all data-sharing confidentiality and obligations under this Plan as if such persons or entities had been parties to this Plan.

c. *Public Reports.* FEMA may share information with the public through Public Reports. Data contained in Public Reports shall be fully aggregated and anonymized. Public Reports shall be aggregated to at least a state level and may be publicly disclosed after consultation and approval from the DOJ and FTC.

(8) Where possible and not obviated by Exigent Circumstances, FEMA will notify Sub-Committee Participants prior to the release of any Competitively Sensitive Information that has not been fully aggregated and anonymized. In consultation with DOJ and FTC, FEMA will consider any good-faith requests made by Sub-Committee members to hold the release of data or requests for further aggregation or anonymization. In general, FEMA will not provide notification prior to the release of *Public Reports*, under the presumption that the data in these reports has already been fully anonymized and de-identified.

(9) Any party receiving Competitively Sensitive Information through this Plan shall use such information solely for the purposes outlined in the Plan and take

steps, such as imposing previously approved firewalls or tracking usage, to prevent misuse of the information. Disclosure and use of Competitively Sensitive Information will be limited to the greatest extent possible, and any party receiving Competitively Sensitive Information shall follow the procedures outlined in paragraph 7 above.

(10) At the conclusion of a Participant's involvement in a Plan—due to the deactivation of the Plan or due to the Participant's withdrawal or removal—each Participant will be requested to sequester any and all Competitively Sensitive Information received through participation in the Plan. This sequestration shall include the deletion of all Competitively Sensitive Information unless required to be kept pursuant to the Record Keeping requirements as described *supra*, Section I, 44 CFR part 332, or any other provision of law.

C. Oversight

Each Sub-Committee Chairperson is responsible for ensuring that the Attorney General, or suitable delegate(s) from the DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under this Plan, including activation, deactivation, and scheduling of meetings. The Attorney General, the FTC Chair, or their delegates may attend Sub-Committee meetings and request to be apprised of any activities taken in accordance with activities under this Plan. DOJ or FTC Representatives may request and review any proposed action by the Sub-Committee or Sub-Committee Participants undertaken pursuant to this Plan, including the provision of data. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she shall provide warning and guidance to the Sub-Committee as soon as the potential issue is identified. If questions arise about the antitrust protections applicable to any particular action, FEMA may request DOJ, in consultation with the FTC, provide an opinion on the legality of the action under relevant DPA antitrust protections.

VI. Establishment of the Sub-Committees

This Plan establishes Sub-Committees to implement the Plan to Establish a National Strategy for the Manufacture, Allocation and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID-19 to provide the Federal Government and the Participants a forum to maximize the manufacture and efficient

distribution of selected types of Diagnostic Test Kits and other Testing Components and to create a prioritization protocol based upon identified types of Diagnostic Test Kits and other Testing Components End-Users and their demonstrated or projected requirements, and demonstrated or projected geographic and regional areas of need. The outcome should include a framework to expeditiously meet any Diagnostic Test Kits and other Testing Components needs in Exigent Circumstances anywhere in the Nation, and to ensure that actions to support the stockpiling of Diagnostic Test Kits and other Testing Components do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Diagnostic Test Kits and other Testing Components recipients. A Sub-Committee Chairperson designated by the Chairperson will convene and preside over each Sub-Committee. Sub-Committees will not be used for contract negotiations or contract discussions between the Participants and the Federal Government; such negotiations or discussions will be in accordance with applicable federal contracting policies and procedures. However, this shall not limit any discussion within a Sub-Committee about the operational utilization of existing and potential contracts between the Participants and Representatives when seeking to align their use with overall manufacturing and distribution efforts consistent with this Plan.

Each Sub-Committee will consist of designated Representatives from FEMA, HHS, other federal agencies with equities in this Plan, and each Sub-Committee Participant. The Attorney General and Chair of the FTC, or their delegates, may also join each Sub-Committee and attend meetings at their discretion. Attendees may also be invited at the discretion of a Sub-Committee Chairperson as subject matter experts, to provide technical advice, or to represent other government agencies, but will not be considered part of the Sub-Committee.

To the extent necessary to respond to the Pandemic, only at the explicit direction of a Sub-Committee Chairperson, and subject to the provisions of Section V(B), Sub-Committee Members may be asked to provide technical advice, share information, help identify and validate places and resources of the greatest need, help project future manufacturing and distribution demands, assist in identifying and resolving the allocation of scarce resources amongst all

necessary public and private sector domestic needs under Exigent Circumstances, and take any other necessary actions to maximize the timely allocation and distribution of Diagnostic Test Kits and other Testing Components as determined necessary by FEMA to respond to the Pandemic. A Sub-Committee Chairperson or his or her designee, at the Sub-Committee Chairperson's sole discretion, will make decisions on these issues in order to ensure the maximum efficiency and effectiveness in the use of Sub-Committee Member's resources. All Sub-Committee Participants will be invited to open Sub-Committee meetings. For selected Sub-Committee meetings, attendance may be limited to designated Sub-Committee Participants to meet specific operational requirements, as determined by FEMA.

Each Sub-Committee Chairperson shall notify the Attorney General, the Chair of the FTC, Representatives, and Participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Plan. Additionally, each Sub-Committee Chairperson shall provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. A Sub-Committee Chairman may restrict attendance at meetings only on the grounds outlined by 44 CFR 332.5(c)(1)–(3). If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed pursuant to 44 CFR 332.3(c)(2).

The Sub-Committee Chairperson shall establish the agenda for each meeting, be responsible for adherence to the agenda, and provide for a written summary or other record of each meeting and provide copies of transcripts or other records to FEMA, the Attorney General, the Chair of the FTC, and all Sub-Committee Participants. The Chairperson shall take necessary actions to protect from public disclosure any data discussed with or obtained from Sub-Committee Participants which a Sub-Committee Participant has identified as a trade secret or as privileged and confidential in accordance with DPA sections 708(h)(3) and 705(d), or which qualifies for withholding under 44 CFR 332.5.

VII. Application and Agreement

The Sub-Committee Participant identified below hereby agrees to join in the Federal Emergency Management Agency sponsored Plan of Action to

Establish a National Strategy for the Manufacture, Allocation and Distribution of Diagnostic Test Kits and other Testing Components under the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and to become a Participant in one or more Sub-Committees established by this Plan. This Plan will be published in the **Federal Register**. This Plan is authorized under section 708 of the Defense Production Act of 1950, as amended. Regulations governing the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and all subsequent Plans of Action at 44 CFR part 332. The applicant, as a Sub-Committee Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations at 44 CFR part 332, and the terms of this Plan.

VIII. Assignment

No Sub-Committee Participant may assign or transfer this Plan, in whole or in part, or any protections, rights or obligations hereunder without the prior written consent of the Sub-Committee Chairperson. When requested, the Sub-Committee Chairperson will respond to written requests for consent within 10 (ten) business days of receipt.

(Company name)

(Name of authorized representative)

(Signature of authorized representative)

(Date)

Administrator (Sponsor)

(Date)

Text of the Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices To Respond to COVID–19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices To Respond to COVID–19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Preface

Pursuant to section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4558), the Federal Emergency Management Agency (FEMA) Administrator (Administrator), after consultation with the Secretary of the Department of Health and Human Services (HHS), the Attorney General of the United States (Attorney General), and the Chair of the Federal Trade Commission (FTC), developed a Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement), 85 FR 50035 (August 17, 2020). The Voluntary Agreement, which operates through a series of Plans of Action, maximizes the manufacture and efficient distribution of Critical Healthcare Resources nationwide to respond to a pandemic by establishing unity of effort between Participants and the Federal Government for integrated coordination, planning, information sharing with FEMA, as authorized by FEMA, and allocation and distribution of Critical Healthcare Resources.

This document establishes a Plan of Action (Plan) to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID–19. This Plan will be implemented under the Voluntary Agreement by several Sub-Committees, beginning with a Sub-Committee to Define Requirements for COVID–19 Drug Products, Drug Substances, and Associated Medical Devices:

(1) Sub-Committee to Define Requirements for COVID–19 Drug Products, Drug Substances, and Associated Medical Devices

(2) Sub-Committee for Monoclonal Antibodies,

(3) Sub-Committee for Drug Products, Drug Substances, and Associated Medical Devices Related to the Treatment of Respiratory Illness,

(4) Sub-Committee for Drug Products, Drug Substances, and Associated Medical Devices Related to Acute and Intensive Care,

(5) Sub-Committee to Accelerate Coronavirus Treatment,

(6) Sub-Committee for Strategic Investment Towards On-Shoring of Pharmaceutical Manufacturing and Fill-Finish, and

(7) Sub-Committee for Emergency Use Authorizations.

FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of

Drug Products, Drug Substances, or Associated Medical Devices; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID-19 Drug Products, Drug Substances, and Associated Medical Devices.

The purpose of the Plan and the Sub-Committees is to maximize the manufacture and efficient distribution of selected types of Drug Products, Drug Substances, and Associated Medical Devices, and create a prioritization protocol for End-Users based upon their demonstrated or projected requirements including geographic and regional circumstances. The primary goal of the Plan is to create a mechanism to immediately meet exigent requests for Drug Products, Drug Substances, and Associated Medical Devices anywhere in the Nation and to ensure that actions to support Drug Products, Drug

Substances, and Associated Medical Devices stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential recipients of Drug Products, Drug Substances, and Associated Medical Devices. When the requirements of the Plan are met, it affords Sub-Committee Participants defenses to civil and criminal actions brought under the antitrust laws (or any similar law of any state) for actions taken within the scope of the Plan. The Plan is designed to foster a close working relationship among FEMA, HHS, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

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IX. Purpose

A pandemic may present conditions that pose a direct threat to the national defense of the United States or its preparedness programs such that, pursuant to DPA section 708(c)(1), an agreement to collectively coordinate, plan, and collaborate for the manufacture, allocation and distribution of Drug Products, Drug Substances, and Associated Medical Devices is necessary for the national defense. This Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID-19 is established under the Voluntary Agreement and establishes seven Sub-Committees to oversee and implement the Plan. The Plan and Sub-Committees will optimize the manufacture and the efficient distribution of selected types of Drug Products, Drug Substances, and Associated Medical Devices and create a prioritization protocol for End-Users

based upon their demonstrated or projected requirements.

X. Authorities

Section 708, Defense Production Act (50 U.S.C. 4558); sections 402(2) & 501(b), Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207); sections 503(b)(2)(B) & 504(a)(10) & (16) of the Homeland Security Act of 2002 (6 U.S.C. 313(b)(2)(B), 314(a)(10) & (16)); sections 201, 301, National Emergencies Act (50 U.S.C. 1601 *et seq.*); section 319, Public Health Service Act (42 U.S.C. 247d); Executive Order (E.O.) 13911, 85 FR 18403 (March 27, 2020); Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use, 85 FR 20195 (April 10, 2020). Pursuant to DPA section 708(f)(1)(A), the Administrator certifies that this Plan is necessary for the national defense.

XI. General Provisions

J. Definitions

Administrator

The FEMA Administrator is the Sponsor of the Voluntary Agreement. Pursuant to a delegation or redelegation of the functions given to the President by DPA section 708, the Administrator proposes and provides for the development and carrying out of the Voluntary Agreement, including through the development and implementation of Plans of Action. The Administrator is responsible for carrying out all duties and responsibilities required by 50 U.S.C. 4558 and 44 CFR part 332 and for appointing one or more Chairpersons to manage and administer the Committee and all Sub-Committees formed to carry out the Voluntary Agreement.

Agreement

The Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to

Respond to a Pandemic (Voluntary Agreement).

Allocation

The process of determining and directing the relative distribution among one or more competing requests from End-Users for the same Drug Products, Drug Substances, or Associated Medical Devices. Through the Allocation process, FEMA—with participation from Sub-Committee Participants—will assess the actual needs of End-Users and determine how to divide the available and projected supply of Drug Products, Drug Substances, and Associated Medical Devices to minimize impacts to life, safety, and economic disruption associated with shortages of Drug Products, Drug Substances, and Associated Medical Devices. Allocation will take place only under Exigent Circumstances. Although FEMA retains decision making authority for all Allocation under this Plan, other federal agency partners retain decision-making authority for all assets under their control.

Associated Medical Devices

A device, as defined under the United States Food, Drug, and Cosmetic Act, 21 U.S.C. 321(h), that is used to manufacture, transport, distribute, deliver, sanitize, dispose of, or in any other way facilitate the use of, any drug product or drug substance needed to cure, mitigate or treat COVID-19.

Attendees

Subject matter experts, invited by the Chairperson or a Sub-Committee Chairperson to attend meetings authorized under the Voluntary Agreement or this Plan, to provide technical advice or to represent other government agencies or interested parties. Invitations to attendees will be extended as required for Committee or Sub-Committee meetings and deliberations.

Chairperson

FEMA senior executive(s), appointed by the Administrator, to chair the Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic (Committee). The Chairperson shall be responsible for the overall management and administration of the Committee, the Voluntary Agreement, and Plans of Action developed under the Voluntary Agreement while remaining under the supervision of the Administrator; shall initiate, or approve in advance, each meeting held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry

out the Voluntary Agreement; appoint one or more co-Chairpersons to chair the Committee, and otherwise shall carry out all duties and responsibilities assigned to them. With the approval of the Administrator, the Chairperson may create one or more Sub-Committees, and may appoint one or more Sub-Committee Chairpersons to chair the Sub-Committees, as appropriate.

Committee

Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic established under the Voluntary Agreement.

Competitively Sensitive Information

Competitively Sensitive Information that is shared pursuant to this Plan may include any Document or other tangible thing or oral transmission that contains financial, business, commercial, scientific, technical, economic, or engineering information or data, including, but not limited to

- financial statements and data,
- customer and supplier lists,
- price and other terms of sale to customers,
- sales records, projections and forecasts,
- inventory levels,
- capacity and capacity utilization,
- cost information,
- sourcing and procurement information,
- manufacturing and production information,
- delivery and shipping information,
- systems and data designs, and
- methods, techniques, processes, procedures, programs, codes, or similar information,

whether tangible or intangible, and regardless of the method of storage, compilation, or recordation, if the owner thereof has taken reasonable measures to protect the information from disclosure to the public or competitors. These measures may be evidenced by marking or labeling the items as “competitively sensitive information” during submission to FEMA or in the Participant’s customary and existing treatment of such information (regardless of labeling).

All Competitively Sensitive Information provided by a Sub-Committee Participant as described herein is deemed Competitively Sensitive Information, except for Information that:

- a. Is published or has been made publicly available at the time of disclosure by the Sub-Committee Participant;
- b. was in the possession of, or was lawfully and readily available to, FEMA

from another source at the time of disclosure without breaching any obligation of confidentiality applicable to the other source; or

c. was independently developed or acquired without reference to or reliance upon the Sub-Committee Participant’s Competitively Sensitive Information;

Where information deemed Competitively Sensitive Information is required to be disclosed by law, regulation, or court order, the “Competitively Sensitive” (or substantially similar) label will continue to attach to all information and portion(s) of documents that are not made public through the required disclosure.

Document

Any information, on paper or in electronic/audio/visual format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Participant and used or shared in the course of participation in the Voluntary Agreement or a subsequent Plan of Action.

Drug Product

Is a finished dosage form, *e.g.*, tablet, capsule, or solution, that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients.

Drug Substance

Is an active ingredient that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the human body, but does not include intermediates used in the synthesis of such ingredient.

End-User

This includes all direct and ancillary medical support including, but not limited to, hospitals, independent healthcare providers, nursing homes, medical laboratories, dental care providers, independent physician offices, first responders, alternate care facilities and the general public that reasonably represents the totality of the nation’s response to COVID-19. “End-User” may also include essential workers necessary to maintain or restore critical infrastructure operations, including but not limited to law enforcement, education, food and agriculture, energy, water and wastewater, and public works personnel.

Exigent Circumstances

As determined by the Chairperson, the actual or forecasted shortage of a particular type or types of Drug Products, Drug Substances, and Associated Medical Devices which likely cannot be fulfilled via usual market mechanisms for an acute, critical time period, and where immediate and substantial harm is projected to occur from lack of intervention.

Fill-Finish

Fill-finish is the final manufacturing step in the overall drug manufacturing process. This process transfers a sterile drug from a filling needle to a sterile container.

On-Shoring

Building domestic capacity that is otherwise available in other Countries.

Pandemic

A Pandemic is defined as an epidemic that has spread to human populations across a large geographic area that is subject to one or more declarations under the National Emergencies Act, the Public Health Service Act, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or if the Administrator determines that one or more declarations is likely to occur and the epidemic poses a direct threat to the national defense or its preparedness programs. For example, Coronavirus Disease 2019 (COVID-19).

Participant

An individual, partnership, corporation, association, or private organization, other than a federal agency, that has substantive capabilities, resources or expertise to carry out the purpose of the Voluntary Agreement, that has been specifically invited to participate in the Voluntary Agreement by the Chairperson, and that has applied and agreed to the terms of the Voluntary Agreement. "Participant" includes a corporate or non-corporate entity entering into the Voluntary Agreement and all subsidiaries and affiliates of that entity in which that entity has 50 percent or more control either by stock ownership, board majority, or otherwise. The Administrator may invite Participants to join the Voluntary Agreement at any time during its effective period.

Plan of Action (Plan)

This document. A documented method, pursuant to 50 U.S.C. 4558(b)(2), proposed by FEMA to implement a particular set of activities under the Voluntary Agreement, through a Sub-Committee focused on a

particular Critical Healthcare Resource, or pandemic response workstream or functional area necessary for the national defense.

Plan of Action Agreement

A separate commitment made by Participants upon invitation and agreement to participate in a Plan of Action as part of one or more Sub-Committees. Completing the Plan of Action Agreement confers responsibilities on the Participant consistent with those articulated in the Plan and affords Participants a defense against antitrust claims under section 708 for actions taken to develop or carry out the Plan and the appropriate Sub-Committee(s), as described in Section IV below.

Representatives

The representatives the Administrator identifies and invites to the Committee from FEMA, HHS, and other federal agencies with equities in this Plan, and empowered to speak on behalf of their agencies' interests. The Attorney General and the Chair of the FTC, or their delegates, may also attend any meeting as a Representative.

Strategic Investment

Targeted investments for on-shoring of drug product and drug substance manufacturing, including fill-finish capacities.

Sub-Committee

A body formed by the Administrator from select Participants to implement a Plan of Action.

Sub-Committee Chairperson

FEMA official, appointed by the Chairperson, to chair a Sub-Committee to implement a Plan of Action. The Sub-Committee Chairperson shall be responsible for the overall management and administration of the Sub-Committee in furtherance of this Plan while remaining under the supervision of the Administrator and the Chairperson.

Sub-Committee Members

Collectively the Sub-Committee Chairperson(s), Representatives, and Sub-Committee Participants. Jointly responsible developing and executing this Plan.

Sub-Committee Participant

A subset of Participants of the Committee, that have been specifically invited to participate in a Sub-Committee by the Sub-Committee Chairperson, and that have applied and agreed to the terms of this Plan and

signed the Plan of Action Agreement. The Sub-Committee Chairperson may invite Participants in the Committee to join a Sub-Committee as a Sub-Committee Participant at any time during the Plan's effective period.

K. Plan of Action Participation

This Plan will be carried out by a subset of the Participants in the Voluntary Agreement through several Sub-Committees:

- (1) Sub-Committee to Define Requirements for COVID-19 Drug Products, Drug Substances, and Associated Medical Devices,
- (2) Sub-Committee for Monoclonal Antibodies,
- (3) Sub-Committee for Drug Products, Drug Substances, and Associated Medical Devices Related to the Treatment of Respiratory Illness,
- (4) Sub-Committee for Drug Products, Drug Substances, and Associated Medical Devices Related to Acute and Intensive Care,
- (5) Sub-Committee to Accelerate Coronavirus Treatment,
- (6) Sub-Committee for Strategic Investment Towards On-Shoring of Pharmaceutical Manufacturing and Fill-Finish, and
- (7) Sub-Committee for Emergency Use Authorizations.

FEMA may establish additional Sub-Committees under this Plan, so long as:

- (1) The Sub-Committee addresses one specific and well-defined category of Drug Products, Drug Substances, and Associated Medical Devices; and
- (2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID-19 Drug Products, Drug Substances, and Associated Medical Devices.

Each Sub-Committee will consist of the (1) Sub-Committee Chairperson(s), (2) Representatives from FEMA, HHS, the Department of Justice (DOJ), and other federal agencies with equities in this Plan, and (3) Sub-Committee Participants that have substantive capabilities, resources or expertise to carry out the purpose of this Plan and have signed the Plan of Action Agreement. The Chairperson shall invite Sub-Committee Participants who, in his or her determination, are reasonably representative of the appropriate industry or segment of such industry. Other Attendees—invited by the Sub-Committee Chairperson as subject matter experts to provide technical advice or to represent the interests of other government agencies or interested parties—may also participate in Sub-Committee meetings. The naming of these Sub-Committees does not commit

the Administrator to creating them unless and until circumstances dictate.

L. Effective Date and Duration of Participation

This Plan is effective immediately upon satisfaction of the requirements of DPA section 708(f)(1). This Plan shall remain in effect until terminated in accordance with 44 CFR 332.4. It shall be effective for no more than five (5) years from August 17, 2020, when the requirements of DPA section 708(f)(1) were satisfied for the Voluntary Agreement, unless otherwise terminated pursuant to DPA section 708(h)(9) and 44 CFR 332.4 or extended as set forth in DPA section 708(f)(2). No action may take place under this Plan until it is activated, as described in Section III(E), below.

M. Withdrawal

Participation in the Plan is voluntary, as is the acceptance of most obligations under the Plan. Sub-Committee Participants may withdraw from this Plan or from an individual Sub-Committee at any point, subject to the fulfillment of obligations previously agreed upon by the Participant prior to the date of withdrawal. Note that the obligations outlined in V.B regarding information management and associated responsibilities apply once a party has shared or received information through a Sub-Committee, and remain in place after the party's withdrawal from the Sub-Committee or Plan. If a Sub-Committee Participant indicates an intent to withdraw from the Plan due to a modification or amendment of the Plan (described below), the Sub-Committee Participant will not be required to perform actions directed by that modification or amendment. *Withdrawal from the Plan will automatically trigger withdrawal from all Sub-Committees; however, a Participant may withdraw from a Sub-Committee without also withdrawing from the Plan or other Sub-Committees.* To withdraw from the Plan or from an individual Sub-Committee, a Participant must provide written notice to the Administrator at least fifteen (15) calendar days prior to the effective date of that Sub-Committee Participant's withdrawal specifying the scope of withdrawal. Following receipt of such notice, the Administrator will inform the other Sub-Committee Participants of the date and the scope of the withdrawal.

Upon the effective date of the withdrawal from the Plan, the Sub-Committee Participant must cease all activities under the Plan. Upon the effective date of the withdrawal from

one or more Sub-Committee(s), the Sub-Committee Participant must cease all activities under the Plan that pertain to the withdrawn Sub-Committee(s).

N. Plan of Action Activation and Deactivation

The Administrator, in consultation with the Chairperson and Sub-Committee Chairperson, will invite a select group of Participants in the Voluntary Agreement to form the following Sub-Committees, beginning with the Sub-Committee to Define Requirements for COVID-19 Drug Products, Drug Substances, and Associated Medical Devices, which will be responsible for implementing this Plan.

- (1) Sub-Committee to Define Requirements for COVID-19 Drug Products, Drug Substances, and Associated Medical Devices,
- (2) Sub-Committee for Monoclonal Antibodies,
- (3) Sub-Committee for Drug Products, Drug Substances, and Associated Medical Devices Related to the Treatment of Respiratory Illness,
- (4) Sub-Committee for Drug Products, Drug Substances, and Associated Medical Devices Related to Acute and Intensive Care,
- (5) Sub-Committee to Accelerate Coronavirus Treatment,
- (6) Sub-Committee for Strategic Investment Towards On-Shoring of Pharmaceutical Manufacturing and Fill-Finish, and
- (7) Sub-Committee for Emergency Use Authorizations.

FEMA may establish additional Sub-Committees under this Plan, so long as:

- (1) The Sub-Committee addresses one specific and well-defined category of Drug Products, Drug Substances, and Associated Medical Devices; and
- (2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID-19 Drug Products, Drug Substances, and Associated Medical Devices.

This Plan will be activated for each invited Participant when the Participant executes a Plan of Action Agreement, and a Participant may not participate in a Sub-Committee until the Plan of Action Agreement is executed. Participants will be invited to join this Plan at the discretion of the Chairperson or the Sponsor to the Voluntary Agreement. Participants will be further invited to attend specific meetings of one or more Sub-Committees at the discretion of the Chairperson.

O. Rules and Regulations

Sub-Committee Participants acknowledge and agree to comply with

all provisions of DPA section 708, as amended, and regulations related thereto which are promulgated by FEMA, the Department of Homeland Security, HHS, the Attorney General, and the FTC. FEMA has promulgated standards and procedures pertaining to voluntary agreements in 44 CFR part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

P. Modification and Amendment

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may terminate or modify, in writing, this Plan at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may terminate or modify, in writing, this Plan at any time. Sub-Committee Participants may propose modifications or amendments to the Plan or to the Sub-Committees at any time.

Where possible, material modifications to the Plan or a Sub-Committee will be subject to a 30 calendar day delayed implementation and opportunity for notice and comment by Sub-Committee Participants to the Chairperson. This delayed implementation period may be shortened or eliminated if the Administrator deems it necessary. The Administrator shall inform Sub-Committee Participants of modifications or amendments to the Plan or to the Sub-Committees as they are proposed and issued.

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may remove Sub-Committee Participants from the Plan or from a Sub-Committee at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may remove Sub-Committee Participants from this Plan or from a Sub-Committee at any time. If a Participant is removed from the Plan or from a Sub-Committee, the Participant may request written notice of the reasons for removal from the Chairperson, who shall provide such notice in a reasonable time-period.

Q. Expenses

Participation in this Plan or in a Sub-Committee does not confer funds to Sub-Committee Participants, nor does it limit or prohibit any pre-existing source of funds. Unless otherwise specified, all expenses, administrative or otherwise, incurred by Sub-Committee Participants associated with participation in this Plan or a Sub-Committee shall be borne exclusively by the Sub-Committee Participants.

R. Record Keeping

Each Sub-Committee Chairperson shall have primary responsibility for maintaining records in accordance with 44 CFR part 332 and shall be the official custodian of records related to carrying out this Plan. Each Sub-Committee Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Sub-Committee Participants or with any other member of the Sub-Committee, including drafts, related to the carrying out of this Plan or incorporating data or information received in the course of carrying out this Plan. Each Sub-Committee Participant agrees to produce to the Administrator, the Attorney General, and the Chair of the FTC upon request any item that this section requires the Participant to maintain. Any record maintained in accordance with 44 CFR part 332 shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with DPA section 705(d), and 44 CFR 332.5.

XII. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

This defense shall not apply to any actions taken after the termination of this Plan. Immediately upon modification of this Plan, no defense to antitrust claims under Section 708 shall be available to any subsequent action that is beyond the scope of the modified

Plan. The Sub-Committee Participant asserting the defense bears the burden of proof to establish the elements of the defense. The defense shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

XIII. Terms and Conditions

As the sponsoring agency, FEMA will maintain oversight over Sub-Committee activities and direct and supervise actions taken to carry out this Plan, including by retaining decision-making authority over actions taken pursuant to the Plan to ensure such actions are necessary to address a direct threat to the national defense. The Attorney General and the Chair of the FTC will monitor activities of the Sub-Committees to ensure they execute their responsibilities in a manner consistent with this Plan and their actions have the least anticompetitive effects possible.

A. Plan of Action Execution

This Plan will be used to support the following objectives to respond to a Pandemic by maximizing the manufacture and efficient distribution of selected types of Drug Products, Drug Substances, and Associated Medical Devices and creating a prioritization protocol for End-Users based upon their demonstrated or projected requirements and taking into account geographic and regional circumstances. Each Sub-Committee will undertake the following Objectives for the Drug Products, Drug Substances, and Associated Medical Devices within its area of jurisdiction.

1. Objectives

(1) Optimize the timely production of sufficient quantities of Drug Products, Drug Substances, and Associated Medical Devices to reduce loss of life and transmission of the COVID-19 virus.

(2) Expand domestic manufacturing of Drug Products, Drug Substances, and Associated Medical Devices, including fill-finish capacities.

(3) Ensure Drug Products, Drug Substances, and Associated Medical Devices are distributed effectively across the whole community nationally based on risk.

(4) Balance restoration and maintenance of the nation's stockpile of Drug Products, Drug Substances, and Associated Medical Devices with near-term requirements.

(5) Establish a process for FEMA Allocation of Drug Products, Drug Substances, and Associated Medical Devices nationwide.

(6) Ensure ongoing competition in the manufacture and distribution of Drug Products, Drug Substances, and Associated Medical Devices to the greatest extent possible under the DPA.

2. Actions

Sub-Committee Participants may be asked to support these objectives by taking the following specific actions:

(1) Assist the Chairperson in identifying which types of Drug Products, Drug Substances, and Associated Medical Devices should be included within each Sub-Committee. Identification will be based upon each item's importance to the national response to COVID-19 and whether it can be reasonably inferred, based upon the best evidence available, that the current and projected supply measured against current and projected demand may not adequately meet the Drug Product, Drug Substance, and Associated Medical Device requirements to all identified End-Users or regional or geographic areas of the country as result of measures taken to respond to COVID-19.

(2) Provide input to the Chairperson in creating a prioritized list of Drug Product, Drug Substance, and Associated Medical Device End-Users by categories for each type of Drug Product, Drug Substance, and Associated Medical Device identified by each Sub-Committee, and ascertaining the relative demand and supply of Drug Products, Drug Substances, and Associated Medical Devices among and within those End-User categories. Prioritization shall be decided by the Chairperson, based upon each item's importance, reflecting the consensus views of the Sub-Committee Members that it represents the most effective way to save lives and prevent the transmission of the COVID-19 virus. This list may be updated throughout the life of the Plan based upon either short term or long-term demands. These categories should be considered holistically in terms of the Whole-of-Nation response to COVID-19.

(3) Evaluate the domestic supply of Drug Products, Drug Substances, and Associated Medical Devices and identify when the expansion of the domestic manufacture of Drug Products, Drug Substances, and Associated Medical Devices may be necessary, as directed and decided by the Chairperson.

(4) Provide information, assist, and validate, as necessary as decided by the Chairperson, demand projections for Drug Products, Drug Substances, and Associated Medical Devices.

(5) Create a process for and collaborate in the evaluation of competing claims for Drug Products, Drug Substances, and Associated Medical Devices from End-Users.

(6) Prepare a general strategy to accomplish the activities listed in V(A)(2)(7) below regarding activities in Exigent Circumstances consistent with the decisions made by the Chairperson.

(7) In Exigent Circumstances, with review and concurrence in all possible instances by DOJ in consultation with FTC:

- Facilitate maximum availability of Drug Products, Drug Substances, and Associated Medical Devices to the nation or particular geographies by deconflicting overlapping demands from the collective Participants' customer base, as directed and decided by the Chairperson.

- Facilitate maximum availability of Drug Products, Drug Substances, and Associated Medical Devices to the nation or particular geographies by deconflicting overlapping supply chain demands placed upon Members, as directed and decided by the Chairperson.

- Facilitate the efficient distribution of Drug Products, Drug Substances, and Associated Medical Devices by deconflicting overlapping distribution chain activities of Members, as directed and decided by the Chairperson.

- Create a process for and collaborate in the Allocation of Drug Products, Drug Substances, and Associated Medical Devices nationwide or in particular geographies consistent with the decisions made by the Chairperson.

- Create a process for and collaborate in meeting any other exigent requirements throughout the nation or particular geographies consistent with the overall strategy prepared by this Sub-Committee.

- Create a process for and collaborate in establishing expanded domestic Drug Product, Drug Substance, and Associated Medical Device manufacturing and fill-finish capacities.

(8) Provide data and information necessary to validate the efforts of the Sub-Committee including the actual and planned amounts of Drug Products, Drug Substances, and Associated Medical Devices to be distributed throughout the Nation, as determined by the Chairperson.

(9) Provide feedback to the Sub-Committee on the outcomes of the collective efforts of the Sub-Committee Members and any impediments or bottlenecks.

(10) Advise the Chairperson whether additional Participants or Attendees

should be invited to join this Plan and Sub-Committee.

(11) Carry out other activities regarding Drug Products, Drug Substances, and Associated Medical Devices as identified by Sub-Committees under this Plan as determined and directed by the Chairperson necessary to address the COVID-19 virus' direct threat to the national defense, where such activities have been reviewed and approved by DOJ and FTC and received concurrence from Sub-Committee members.

D. Information Management and Responsibilities

FEMA will request only that data and information from Sub-Committee Participants that is necessary to meet the objectives of the Plan and consistent with the scope of the relevant Sub-Committees. Upon signing a Plan of Action Agreement for this Plan, FEMA requests that Participants endeavor to cooperate with diligence and speed, and to the extent permissible under this Plan, and share with FEMA data and information necessary to meet the objectives of this Plan.

Sub-Committee Participants agree to share with FEMA the following data with diligence and speed, to the extent permissible under this Plan, and abide by the following guidelines, where feasible and consistent with the data that is owned by each Sub-Committee Participant:

(1) In general, Participants will not be asked to share Competitively Sensitive Information directly with other Participants.

(2) FEMA will only request direct sharing of Competitively Sensitive Information among Participants during Exigent Circumstances where there is a mission critical need or timeline such that sharing only through FEMA is impractical or threatens the outcome of the Plan or Sub-Committee action. Such requests, if made, will be only among Participants whose participation is necessary to meet the objectives of the Plan, will be limited in scope to the greatest extent possible, and will be shared only pursuant to safeguards subject to prior review and audit by DOJ and FTC. Direct sharing of Competitively Sensitive Information with other Participants will be limited in scope and circumstances to the greatest extent possible. Participants may not share Competitively Sensitive Information directly with other Participants unless specifically requested by FEMA, in consultation with DOJ and FTC. All Competitively Sensitive Information delivered to FEMA or to another Sub-Committee

Participant shall be delivered by secure means, for example, password-protected or encrypted electronic files or drives with the password/key delivered by separate communication or method or via upload to an appropriately secure web portal as directed by FEMA. All data delivered to the web portal designated by FEMA is deemed to be Competitively Sensitive Information.

(3) To allow FEMA to identify and appropriately protect documents containing Competitively Sensitive Information by the Sub-Committee Participant providing the documents, the Sub-Committee Participant will make good faith efforts to designate any Competitively Sensitive Information by placing restrictive markings on documents and things considered to be competitively sensitive, the restrictive markings being sufficiently clear in wording and visibility to indicate the restricted nature of the data. The Sub-Committee Participant will identify Competitively Sensitive Information that is disclosed verbally by oral warning. Information designated as competitively sensitive will, to the extent allowed by law, be presumed to constitute confidential or privileged commercial or financial information, and be provided by the Sub-Committee Participant to FEMA with the expectation that it will be kept confidential by both parties, as such terms are understood in accordance with 5 U.S.C. 552(b)(4) of the Freedom of Information Act and federal judicial interpretations of this statute. FEMA agrees that to the extent any information designated as competitively sensitive by a Sub-Committee Participant is responsive to a request for disclosure under the Freedom of Information Act, FEMA will consult with the Sub-Committee Participant and afford the Participant ten (10) working days to object to any disclosure by FEMA.

(4) FEMA will make good faith efforts to appropriately recognize unmarked Documents containing Competitively Sensitive Information as Competitively Sensitive Information. However, FEMA cannot guarantee that all unmarked Documents will be recognized as being Competitively Sensitive Information and protected from disclosure to third parties. If the unmarked Documents have not been disclosed without restriction outside of FEMA, the Sub-Committee Participant may retroactively request to have appropriate designations placed on the Documents. If the unmarked Documents have been disclosed without restriction outside of FEMA, FEMA will, to the extent practicable, remove any requested information from public forums

controlled by FEMA and will work promptly to request that a receiving party return or destroy disclosed unmarked Documents if requested by the Sub-Committee Participant.

(5) **Competitively Sensitive Information** may be used by FEMA, alone or in combination with additional information, including Documents and Competitively Sensitive Information received from third parties, to support FEMA's implementation of this Plan as determined by the Chairperson. In all situations, FEMA will aggregate and anonymize Competitively Sensitive Information to the greatest extent possible to protect the interests retained by the owners of the data while still allowing the objectives of the Plan and Sub-Committee to be achieved. To the greatest extent possible, such aggregation will render the competitively sensitive nature of the Competitively Sensitive Information of the Sub-Committee Participant no longer recognizable in a commercially sensitive manner, and without sufficient information to enable, by inference or otherwise, attribution to Sub-Committee Participant or its affiliates (as clearly identified and disclosed to FEMA). Any disclosure of Competitively Sensitive Information by FEMA, within or outside a Sub-Committee, will be subject to review and approval by DOJ and FTC.

(6) Except as otherwise expressly permitted by applicable federal law, FEMA shall not disclose any Competitively Sensitive Information or use any Competitively Sensitive Information for any purpose other than in connection with the purposes of this Plan, and FEMA will not sell any Competitively Sensitive Information of any Sub-Committee Participant.

(7) Except as described below, FEMA may disclose Competitively Sensitive Information only to its employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors). Any individual with access to Competitively Sensitive Information will be expected to comply with the terms of this Plan.

a. Information Sharing within the Sub-Committee: FEMA may share Competitively Sensitive Information with Sub-Committee Participants and Federal Representatives of the Plan, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) where there is a need to know and where disclosure is reasonably necessary in furtherance of implementing the Plan. FEMA will aggregate and anonymize data prior to

sharing with the Sub-Committee Participants to the greatest extent possible while still allowing the objectives of the Plan to be achieved, and will not share data—particularly to competitors of the submitter—prior to consultation with and approval by the DOJ and FTC.

i. Sub-Committee Participants, when providing Competitively Sensitive Information to FEMA, may request that this Information not be shared with other Sub-Committee Participants. Where these requests are made in good faith and are reasonable in nature, FEMA will respect these requests to the greatest extent possible and will consult the owner of the data prior to any release made to Sub-Committee Participants.

b. Restricted Reports. FEMA may communicate Competitively Sensitive Information to appropriate government officials through Restricted Reports. The information contained in Restricted Reports shall be aggregated and anonymized to the greatest extent possible, while recognizing that these officials may need a certain amount of granularity and specificity of information to appropriately respond to COVID-19. FEMA will aim to aggregate data to the County level, and will not share Restricted Reports prior to consultation and approval from the DOJ and FTC. FEMA may disclose Restricted Reports to relevant White House and Administration officials and State Governors, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) who have a need to know and to whom such disclosure is reasonably necessary solely in furtherance of the implementation of this Plan. FEMA shall take appropriate action (by instructions, agreement, or otherwise) to ensure that receiving parties comply with all data-sharing confidentiality and obligations under this Plan as if such persons or entities had been parties to this Plan.

c. Public Reports. FEMA may share information with the public through Public Reports. Data contained in Public Reports shall be fully aggregated and anonymized. Public Reports shall be aggregated to at least a state level and may be publicly disclosed after consultation and approval from the DOJ and FTC.

(8) Where possible and not obviated by Exigent Circumstances, FEMA will notify Sub-Committee Participants prior to the release of any Competitively Sensitive Information that has not been fully aggregated and anonymized. In

consultation with DOJ and FTC, FEMA will consider any good-faith requests made by Sub-Committee members to hold the release of data or requests for further aggregation or anonymization. In general, FEMA will not provide notification prior to the release of *Public Reports*, under the presumption that the data in these reports has already been fully anonymized and de-identified.

(9) Any party receiving Competitively Sensitive Information through this Plan shall use such information solely for the purposes outlined in the Plan and take steps, such as imposing previously approved firewalls or tracking usage, to prevent misuse of the information. Disclosure and use of Competitively Sensitive Information will be limited to the greatest extent possible, and any party receiving Competitively Sensitive Information shall follow the procedures outlined in paragraph 7 above.

(10) At the conclusion of a Participant's involvement in a Plan—due to the deactivation of the Plan or due to the Participant's withdrawal or removal—each Participant will be requested to sequester any and all Competitively Sensitive Information received through participation in the Plan. This sequestration shall include the deletion of all Competitively Sensitive Information unless required to be kept pursuant to the Record Keeping requirements as described *supra*, Section I, 44 CFR part 332, or any other provision of law.

E. Oversight

Each Sub-Committee Chairperson is responsible for ensuring that the Attorney General, or suitable delegate(s) from the DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under this Plan, including activation, deactivation, and scheduling of meetings. The Attorney General, the FTC Chair, or their delegates may attend Sub-Committee meetings and request to be apprised of any activities taken in accordance with activities under this Plan. DOJ or FTC Representatives may request and review any proposed action by the Sub-Committee or Sub-Committee Participants undertaken pursuant to this Plan, including the provision of data. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she shall provide warning and guidance to the Sub-Committee as soon as the potential issue is identified. If questions arise about the antitrust protections applicable to any particular action, FEMA may request DOJ, in consultation with the FTC, provide an opinion on the

legality of the action under relevant DPA antitrust protections.

XIV. Establishment of the Sub-Committees

This Plan establishes Sub-Committees to implement the Plan to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID-19 to provide the Federal Government and the Participants a forum to maximize the manufacture and efficient distribution of selected types of Drug Products, Drug Substances, and Associated Medical Devices and to create a prioritization protocol based upon identified types of Drug Product, Drug Substance, and Associated Medical Device End-Users and their demonstrated or projected requirements, and demonstrated or projected geographic and regional areas of need. The outcome should include a framework to expeditiously meet any Drug Product, Drug Substance, and Associated Medical Device needs in Exigent Circumstances anywhere in the Nation, and to ensure that actions to support Drug Product, Drug Substance, and Associated Medical Device stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Drug Product, Drug Substance, and Associated Medical Device recipients. A Sub-Committee Chairperson designated by the Chairperson will convene and preside over each Sub-Committee. Sub-Committees will not be used for contract negotiations or contract discussions between the Participants and the Federal Government; such negotiations or discussions will be in accordance with applicable federal contracting policies and procedures. However, this shall not limit any discussion within a Sub-Committee about the operational utilization of existing and potential contracts between the Participants and Representatives when seeking to align their use with overall manufacturing and distribution efforts consistent with this Plan.

Each Sub-Committee will consist of designated Representatives from FEMA, HHS, other federal agencies with equities in this Plan, and each Sub-Committee Participant. The Attorney General and Chair of the FTC, or their delegates, may also join each Sub-Committee and attend meetings at their discretion. Attendees may also be invited at the discretion of a Sub-Committee Chairperson as subject matter experts, to provide technical advice, or to represent other government

agencies, but will not be considered part of the Sub-Committee.

To the extent necessary to respond to the Pandemic, only at the explicit direction of a Sub-Committee Chairperson, and subject to the provisions of Section V(B), Sub-Committee Members may be asked to provide technical advice, share information, help identify and validate places and resources of the greatest need, help project future manufacturing and distribution demands, assist in identifying and resolving the allocation of scarce resources amongst all necessary public and private sector domestic needs under Exigent Circumstances, and take any other necessary actions to maximize the timely manufacture and distribution of Drug Products, Drug Substances, and Associated Medical Devices as determined necessary by FEMA to respond to the Pandemic. A Sub-Committee Chairperson or his or her designee, at the Sub-Committee Chairperson's sole discretion, will make decisions on these issues in order to ensure the maximum efficiency and effectiveness in the use of Sub-Committee Member's resources. All Sub-Committee Participants will be invited to open Sub-Committee meetings. For selected Sub-Committee meetings, attendance may be limited to designated Sub-Committee Participants to meet specific operational requirements, as determined by FEMA.

Each Sub-Committee Chairperson shall notify the Attorney General, the Chair of the FTC, Representatives, and Participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Plan. Additionally, each Sub-Committee Chairperson shall provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. A Sub-Committee Chairman may restrict attendance at meetings only on the grounds outlined by 44 CFR 332.5(c)(1)–(3). If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed pursuant to 44 CFR 332.3(c)(2).

The Sub-Committee Chairperson shall establish the agenda for each meeting, be responsible for adherence to the agenda, and provide for a written summary or other record of each meeting and provide copies of transcripts or other records to FEMA, the Attorney General, the Chair of the FTC, and all Sub-Committee

Participants. The Chairperson shall take necessary actions to protect from public disclosure any data discussed with or obtained from Sub-Committee Participants which a Sub-Committee Participant has identified as a trade secret or as privileged and confidential in accordance with DPA sections 708(h)(3) and 705(d), or which qualifies for withholding under 44 CFR 332.5.

XV. Application and Agreement

The Sub-Committee Participant identified below hereby agrees to join in the Federal Emergency Management Agency sponsored Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices under the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and to become a Participant in one or more Sub-Committees established by this Plan. This Plan will be published in the **Federal Register**. This Plan is authorized under section 708 of the Defense Production Act of 1950, as amended. Regulations governing the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and all subsequent Plans of Action at 44 CFR part 332. The applicant, as a Sub-Committee Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations at 44 CFR part 332, and the terms of this Plan.

XVI. Assignment

No Sub-Committee Participant may assign or transfer this Plan, in whole or in part, or any protections, rights or obligations hereunder without the prior written consent of the Sub-Committee Chairperson. When requested, the Sub-Committee Chairperson will respond to written requests for consent within 10 (ten) business days of receipt.

(Company name)

(Name of authorized representative)

(Signature of authorized representative)

(Date)

Administrator (Sponsor)

(Date)

Text of the Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices To Respond to COVID-19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices To Respond to COVID-19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Preface

Pursuant to section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4558), the Federal Emergency Management Agency (FEMA) Administrator (Administrator), after consultation with the Secretary of the Department of Health and Human Services (HHS), the Attorney General of the United States (Attorney General), and the Chair of the Federal Trade Commission (FTC), developed a Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement), 85 FR 50035 (August 17, 2020). The Voluntary Agreement, which operates through a series of Plans of

Action, maximizes the manufacture and efficient distribution of Critical Healthcare Resources nationwide to respond to a pandemic by establishing unity of effort between Participants and the Federal Government for integrated coordination, planning, information sharing with FEMA, as authorized by FEMA, and allocation and distribution of Critical Healthcare Resources.

This document establishes a Plan of Action (Plan) to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID-19. This Plan will be implemented under the Voluntary Agreement by several Sub-Committees.

(1) Sub-Committee to Define COVID-19 Medical Device Requirements,

(2) Sub-Committee for General Hospital Devices,

(3) Sub-Committee for Immunology Devices,

(4) Sub-Committee for Microbiology Devices,

(5) Sub-Committee for Pathology Devices, and

(6) Sub-Committee for Toxicology Devices.

The Sub-Committee to Define COVID-19 Medical Device Requirements will be formed first.

FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of Medical Device; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define COVID-19 Medical Device Requirements.

The purpose of the Plan and the Sub-Committees is to maximize the manufacture and efficient distribution of selected types of Medical Devices and create a prioritization protocol for End-Users based upon their demonstrated or projected requirements including geographic and regional circumstances. The primary goal of the Plan is to create a mechanism to immediately meet exigent Medical Device requests anywhere in the Nation and to ensure that actions to support Medical Device stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Medical Device recipients. When the requirements of the Plan are met, it affords Sub-Committee Participants defenses to civil and criminal actions brought under the antitrust laws (or any similar law of any state) for actions taken within the scope of the Plan. The Plan is designed to foster a close working relationship among FEMA, HHS, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

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XVII. Purpose

A pandemic may present conditions that pose a direct threat to the national defense of the United States or its preparedness programs such that, pursuant to DPA section 708(c)(1), an agreement to collectively coordinate, plan, and collaborate for the manufacture and distribution of Medical Devices is necessary for the national defense. This Plan of Action to Establish

a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID-19 is established under the Voluntary Agreement and establishes six Sub-Committees to oversee and implement the Plan. The Plan and Sub-Committees will optimize the manufacture and the efficient distribution of selected types of Medical Devices and create a prioritization protocol for End-Users

based upon their demonstrated or projected requirements.

XVIII. Authorities

Section 708, Defense Production Act (50 U.S.C. 4558); sections 402(2) & 501(b), Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207); sections 503(b)(2)(B) & 504(a)(10) & (16) of the Homeland Security Act of 2002 (6 U.S.C. 313(b)(2)(B), 314(a)(10) & (16)); sections

201, 301, National Emergencies Act (50 U.S.C. 1601 *et seq.*); section 319, Public Health Service Act (42 U.S.C. 247d); Executive Order (E.O.) 13911, 85 FR 18403 (March 27, 2020); Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use, 85 FR 20195 (April 10, 2020). Pursuant to DPA section 708(f)(1)(A), the Administrator certifies that this Plan is necessary for the national defense.

XIX. General Provisions

S. Definitions

Administrator

The FEMA Administrator is the Sponsor of the Voluntary Agreement. Pursuant to a delegation or redelegation of the functions given to the President by DPA section 708, the Administrator proposes and provides for the development and carrying out of the Voluntary Agreement, including through the development and implementation of Plans of Action. The Administrator is responsible for carrying out all duties and responsibilities required by 50 U.S.C. 4558 and 44 CFR part 332 and for appointing one or more Chairpersons to manage and administer the Committee and all Sub-Committees formed to carry out the Voluntary Agreement.

Agreement

The Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement).

Allocation

The process of determining and directing the relative distribution among one or more competing requests from End-Users for the same Medical Devices. Through the Allocation process, FEMA—with participation from Sub-Committee Participants—will assess the actual needs of End-Users and determine how to divide the available and projected supply of Medical Devices to minimize impacts to life, safety, and economic disruption associated with shortages of Medical Devices. Allocation will take place only under Exigent Circumstances. FEMA retains decision-making authority for all Allocation under this Plan.

Attendees

Subject matter experts, invited by the Chairperson or a Sub-Committee Chairperson to attend meetings authorized under the Voluntary Agreement or this Plan, to provide technical advice or to represent other

government agencies or interested parties. Invitations to attendees will be extended as required for Committee or Sub-Committee meetings and deliberations.

Chairperson

FEMA senior executive(s), appointed by the Administrator, to chair the Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic (Committee). The Chairperson shall be responsible for the overall management and administration of the Committee, the Voluntary Agreement, and Plans of Action developed under the Voluntary Agreement while remaining under the supervision of the Administrator; shall initiate, or approve in advance, each meeting held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the Voluntary Agreement; appoint one or more co-Chairpersons to chair the Committee, and otherwise shall carry out all duties and responsibilities assigned to him. With the approval of the Administrator, the Chairperson may create one or more Sub-Committees, and may appoint one or more Sub-Committee Chairpersons to chair the Sub-Committees, as appropriate.

Committee

Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic established under the Voluntary Agreement.

Competitively Sensitive Information

Competitively Sensitive Information that is shared pursuant to this Plan may include any Document or other tangible thing or oral transmission that contains financial, business, commercial, scientific, technical, economic, or engineering information or data, including, but not limited to

- financial statements and data,
- customer and supplier lists,
- price and other terms of sale to customers,
- sales records, projections and forecasts,
- inventory levels,
- capacity and capacity utilization,
- cost information,
- sourcing and procurement information,
- manufacturing and production information,
- delivery and shipping information,
- systems and data designs, and
- methods, techniques, processes, procedures, programs, codes, or similar information,

whether tangible or intangible, and regardless of the method of storage,

compilation, or recordation, if the owner thereof has taken reasonable measures to protect the information from disclosure to the public or competitors. These measures may be evidenced by marking or labeling the items as “competitively sensitive information” during submission to FEMA or in the Participant’s customary and existing treatment of such information (regardless of labeling).

All Competitively Sensitive Information provided by a Sub-Committee Participant as described herein is deemed Competitively Sensitive Information, except for Information that:

- a. Is published or has been made publicly available at the time of disclosure by the Sub-Committee Participant;
- b. was in the possession of, or was lawfully and readily available to, FEMA from another source at the time of disclosure without breaching any obligation of confidentiality applicable to the other source; or
- c. was independently developed or acquired without reference to or reliance upon the Sub-Committee Participant’s Competitively Sensitive Information;

Where information deemed Competitively Sensitive Information is required to be disclosed by law, regulation, or court order, the “Competitively Sensitive” (or substantially similar) label will continue to attach to all information and portion(s) of documents that are not made public through the required disclosure.

Document

Any information, on paper or in electronic/audio/visual format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Participant and used or shared in the course of participation in the Voluntary Agreement or a subsequent Plan of Action.

End-User

This includes all direct and ancillary medical support including, but not limited to, hospitals, independent healthcare providers, nursing homes, medical laboratories, dental care providers, independent physician offices, first responders, alternate care facilities and the general public that reasonably represents the totality of the nation’s response to COVID-19. “End-User” may also include essential workers necessary to maintain or restore critical infrastructure operations, including but not limited to law

enforcement, education, food and agriculture, energy, water and wastewater, and public works personnel.

Exigent Circumstances

As determined by the Chairperson, the actual or forecasted shortage of a particular type or types of Medical Devices which likely cannot be fulfilled via usual market mechanisms for an acute, critical time period, and where immediate and substantial harm is projected to occur from lack of intervention.

General Hospital Devices

Refers to general hospital and personal use devices intended for human use that are in commercial distribution, as classified and described in 21 CFR 880.

Immunology Devices

Refers to immunology devices intended for human use that are in commercial distribution, as classified and described in 21 CFR 866.

Medical Device

Defined under Section 201(h) of the Food, Drug and Cosmetic Act (21 U.S.C. 321) as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is:

1. Recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them,
2. intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or
3. intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and

which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. The term “device” does not include software functions excluded pursuant to section 520(o) of the Food, Drug and Cosmetic Act.

Microbiology Devices

Refers to microbiology devices intended for human use that are in commercial distribution, as classified and described in 21 CFR 866.

Pandemic

A Pandemic is defined as an epidemic that has spread to human populations across a large geographic area that is subject to one or more declarations under the National Emergencies Act, the Public Health Service Act, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or if the Administrator determines that one or more declarations is likely to occur and the epidemic poses a direct threat to the national defense or its preparedness programs. For example, Coronavirus Disease 2019 (COVID-19).

Participant

An individual, partnership, corporation, association, or private organization, other than a federal agency, that has substantive capabilities, resources or expertise to carry out the purpose of the Voluntary Agreement, that has been specifically invited to participate in the Voluntary Agreement by the Chairperson, and that has applied and agreed to the terms of the Voluntary Agreement. “Participant” includes a corporate or non-corporate entity entering into the Voluntary Agreement and all subsidiaries and affiliates of that entity in which that entity has 50 percent or more control either by stock ownership, board majority, or otherwise. The Administrator may invite Participants to join the Voluntary Agreement at any time during its effective period.

Pathology Devices

Refers to pathology devices intended for human use that are in commercial distribution, as classified and described in 21 CFR 864.

Plan of Action (Plan)

This document. A documented method, pursuant to 50 U.S.C. 4558(b)(2), proposed by FEMA to implement a particular set of activities under the Voluntary Agreement, through a Sub-Committee focused on a particular Critical Healthcare Resource, or pandemic response workstream or functional area necessary for the national defense.

Plan of Action Agreement

A separate commitment made by Participants upon invitation and agreement to participate in a Plan of Action as part of one or more Sub-Committees. Completing the Plan of Action Agreement confers responsibilities on the Participant consistent with those articulated in the Plan of Action and affords Participants a defense against antitrust claims under section 708 for actions taken to develop

or carry out the Plan and the appropriate Sub-Committee(s), as described in Section IV below.

Representatives

The representatives the Administrator identifies and invites to the Committee from FEMA, HHS, and other federal agencies with equities in this Plan, and empowered to speak on behalf of their agencies' interests. The Attorney General and the Chair of the FTC, or their delegates, may also attend any meeting as a Representative.

Sub-Committee

A body formed by the Administrator from select Participants to implement a Plan of Action.

Sub-Committee Chairperson

FEMA executive, appointed by the Chairperson, to chair a Sub-Committee to implement a Plan of Action. The Sub-Committee Chairperson shall be responsible for the overall management and administration of the Sub-Committee in furtherance of this Plan while remaining under the supervision of the Administrator and the Chairperson.

Sub-Committee Members

Collectively the Sub-Committee Chairperson(s), Representatives, and Sub-Committee Participants. Jointly responsible developing and executing this Plan.

Sub-Committee Participant

A subset of Participants of the Committee, that have been specifically invited to participate in a Sub-Committee by the Sub-Committee Chairperson, and that have applied and agreed to the terms of this Plan and signed the Plan of Action Agreement. The Sub-Committee Chairperson may invite Participants in the Committee to join a Sub-Committee as a Sub-Committee Participant at any time during the Plan's effective period.

Toxicology Devices

Refers to clinical toxicology devices intended for human use that are in commercial distribution, as classified and described in 21 CFR 862.

T. Plan of Action Participation

This Plan will be carried out by a subset of Participants in the Voluntary Agreement through several Sub-Committees:

- (1) Sub-Committee to Define COVID-19 Medical Device Requirements,
- (2) Sub-Committee for General Hospital Devices,
- (3) Sub-Committee for Immunology Devices,

(4) Sub-Committee for Microbiology Devices,

(5) Sub-Committee for Pathology Devices, and

(6) Sub-Committee for Toxicology Devices

The Sub-Committee to Define COVID-19 Medical Device Requirements will be formed first.

FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of Medical Device; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define COVID-19 Medical Device Requirements.

Each Sub-Committee will consist of the (1) Sub-Committee Chairperson(s), (2) Representatives from FEMA, HHS, the Department of Justice (DOJ), and other federal agencies with equities in this Plan, and (3) Sub-Committee Participants that have substantive capabilities, resources or expertise to carry out the purpose of this Plan and have signed the Plan of Action Agreement. The Chairperson shall invite Sub-Committee Participants who, in his or her determination, are reasonably representative of the appropriate industry or segment of such industry. Other Attendees—invited by the Sub-Committee Chairperson as subject matter experts to provide technical advice or to represent the interests of other government agencies or interested parties—may also participate in Sub-Committee meetings. The naming of these Sub-Committees does not commit the Administrator to creating them unless and until circumstances dictate.

U. Effective Date and Duration of Participation

This Plan is effective immediately upon satisfaction of the requirements of DPA section 708(f)(1). This Plan shall remain in effect until terminated in accordance with 44 CFR 332.4. It shall be effective for no more than five (5) years from August 17, 2020, when the requirements of DPA section 708(f)(1) were satisfied for the Voluntary Agreement, unless otherwise terminated pursuant to DPA section 708(h)(9) and 44 CFR 332.4 or extended as set forth in DPA section 708(f)(2). No action may take place under this Plan until it is activated, as described in Section III(E), below.

V. Withdrawal

Participation in the Plan is voluntary, as is the acceptance of most obligations under the Plan. Sub-Committee Participants may withdraw from this Plan or from an individual Sub-

Committee at any point, subject to the fulfillment of obligations previously agreed upon by the Participant prior to the date of withdrawal. Note that the obligations outlined in V.B regarding information management and associated responsibilities apply once a party has shared or received information through a Sub-Committee, and remain in place after the party's withdrawal from the Sub-Committee or Plan. If a Sub-Committee Participant indicates an intent to withdraw from the Plan due to a modification or amendment of the Plan (described below), the Sub-Committee Participant will not be required to perform actions directed by that modification or amendment.

Withdrawal from the Plan will automatically trigger withdrawal from all Sub-Committees; however, a Participant may withdraw from a Sub-Committee without also withdrawing from the Plan or other Sub-Committees. To withdraw from the Plan or from an individual Sub-Committee, a Participant must provide written notice to the Administrator at least fifteen (15) calendar days prior to the effective date of that Sub-Committee Participant's withdrawal specifying the scope of withdrawal. Following receipt of such notice, the Administrator will inform the other Sub-Committee Participants of the date and the scope of the withdrawal.

Upon the effective date of the withdrawal from the Plan, the Sub-Committee Participant must cease all activities under the Plan. Upon the effective date of the withdrawal from one or more Sub-Committee(s), the Sub-Committee Participant must cease all activities under the Plan that pertain to the withdrawn Sub-Committee(s).

W. Plan of Action Activation and Deactivation

The Administrator, in consultation with the Chairperson and Sub-Committee Chairperson, will invite a select group of Participants in the Voluntary Agreement to form the following Sub-Committees, beginning with the Sub-Committee to Define COVID-19 Medical Device Requirements, which will be responsible for implementing this Plan.

(1) Sub-Committee to Define COVID-19 Medical Device Requirements,

(2) Sub-Committee for General Hospital Devices,

(3) Sub-Committee for Immunology Devices,

(4) Sub-Committee for Microbiology Devices,

(5) Sub-Committee for Pathology Devices, and

(6) Sub-Committee for Toxicology Devices

FEMA may establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined category of Medical Device; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define COVID-19 Medical Device Requirements.

This Plan will be activated for each invited Participant when the Participant executes a Plan of Action Agreement, and a Participant may not participate in a Sub-Committee until the Plan of Action Agreement is executed. Participants will be invited to join this Plan at the discretion of the Chairperson or the Sponsor to the Voluntary Agreement. Participants will be further invited to attend specific meetings of one or more Sub-Committees at the discretion of the Chairperson.

X. Rules and Regulations

Sub-Committee Participants acknowledge and agree to comply with all provisions of DPA section 708, as amended, and regulations related thereto which are promulgated by FEMA, the Department of Homeland Security, HHS, the Attorney General, and the FTC. FEMA has promulgated standards and procedures pertaining to voluntary agreements in 44 CFR part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

Y. Modification and Amendment

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may terminate or modify, in writing, this Plan at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may terminate or modify, in writing, this Plan at any time. Sub-Committee Participants may propose modifications or amendments to the Plan or to the Sub-Committees at any time.

Where possible, material modifications to the Plan or a Sub-Committee will be subject to a 30 calendar day delayed implementation and opportunity for notice and comment by Sub-Committee Participants to the Chairperson. This delayed implementation period may be shortened or eliminated if the Administrator deems it necessary. The Administrator shall inform Sub-Committee Participants of modifications or amendments to the Plan or to the Sub-Committees as they are proposed and issued.

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may remove Sub-Committee Participants from the Plan or from a Sub-Committee at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may remove Sub-Committee Participants from this Plan or from a Sub-Committee at any time. If a Participant is removed from the Plan or from a Sub-Committee, the Participant may request written notice of the reasons for removal from the Chairperson, who shall provide such notice in a reasonable time period.

Z. Expenses

Participation in this Plan or in a Sub-Committee does not confer funds to Sub-Committee Participants, nor does it limit or prohibit any pre-existing source of funds. Unless otherwise specified, all expenses, administrative or otherwise, incurred by Sub-Committee Participants associated with participation in this Plan or a Sub-Committee shall be borne exclusively by the Sub-Committee Participants.

AA. Record Keeping

Each Sub-Committee Chairperson shall have primary responsibility for maintaining records in accordance with 44 CFR part 332 and shall be the official custodian of records related to carrying out this Plan. Each Sub-Committee Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Sub-Committee Participants or with any other member of the Sub-Committee, including drafts, related to the carrying out of this Plan or incorporating data or information received in the course of carrying out this Plan. Each Sub-Committee Participant agrees to produce to the Administrator, the Attorney General, and the Chair of the FTC upon request any item that this section requires the Participant to maintain. Any record maintained in accordance with 44 CFR part 332 shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with DPA section 705(d), and 44 CFR 332.5.

XX. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of

any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

This defense shall not apply to any actions taken after the termination of this Plan. Immediately upon modification of this Plan, no defense to antitrust claims under Section 708 shall be available to any subsequent action that is beyond the scope of the modified Plan. The Sub-Committee Participant asserting the defense bears the burden of proof to establish the elements of the defense. The defense shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

XXI. Terms and Conditions

As the sponsoring agency, FEMA will maintain oversight over Sub-Committee activities and direct and supervise actions taken to carry out this Plan, including by retaining decision-making authority over actions taken pursuant to the Plan to ensure such actions are necessary to address a direct threat to the national defense. The Attorney General and the Chair of the FTC will monitor activities of the Sub-Committees to ensure they execute their responsibilities in a manner consistent with this Plan and their actions have the least anticompetitive effects possible.

A. Plan of Action Execution

This Plan will be used to support the following objectives to respond to a Pandemic by maximizing the manufacture and efficient distribution of selected types of Medical Devices and creating a prioritization protocol for End-Users based upon their demonstrated or projected requirements and taking into account geographic and regional circumstances. Each Sub-Committee will undertake the following Objectives for the Medical Devices within its area of jurisdiction.

1. Objectives

(1) Optimize the timely production of sufficient quantities of Medical Devices to reduce loss of life and transmission of the COVID-19 virus.

(2) Ensure Medical Devices are distributed effectively across the whole community nationally based on risk.

(3) Balance restoration and maintenance of the nation's stockpile of Medical Devices with near-term requirements.

(4) Establish a process for FEMA Allocation of Medical Devices nationwide.

(5) Ensure ongoing competition in the manufacture and distribution of Medical Devices to the greatest extent possible under the DPA.

2. Actions

Sub-Committee Participants may be asked to support these objectives by taking the following specific actions:

(1) Assist the Chairperson in identifying which types of Medical Devices should be included within each Sub-Committee. Identification will be based upon each item's importance to the national response to COVID-19 and whether it can be reasonably inferred, based upon the best evidence available, that that current and projected supply measured against current and projected demand may not adequately meet the Medical Device requirements to all identified End-Users or regional or geographic areas of the country as result of measures taken to respond to COVID-19.

(2) Provide input to the Chairperson in creating a prioritized list of Medical Device End-Users by categories for each type of Medical Device identified by each Sub-Committee and ascertaining the relative demand and supply of Medical Devices among and within those End-User categories. Prioritization shall be decided by the Chairperson, based upon each item's importance, reflecting the consensus views of the Sub-Committee Members that it represents the most effective way to save lives and prevent the transmission of the COVID-19 virus. This list may be updated throughout the life of the Plan based upon either short term or long-term demands. These categories should be considered holistically in terms of the Whole-of-Nation response to COVID-19.

(3) Evaluate the domestic supply of Medical Devices and identify when the expansion of the domestic manufacture of Medical Devices may be necessary, as directed and decided by the Chairperson.

(4) Provide information, assist, and validate, as necessary as decided by the

Chairperson, demand projections for Medical Devices.

(5) Create a process for and collaborate in the evaluation of competing claims for Medical Devices from End-Users.

(6) Prepare a general strategy to accomplish the activities listed in V(A)(2)(7) below regarding activities in Exigent Circumstances consistent with the decisions made by the Chairperson.

(7) In Exigent Circumstances, with review and concurrence in all possible instances by DOJ in consultation with FTC:

- Facilitate maximum availability of Medical Devices to the nation or particular geographies by deconflicting overlapping demands from the collective Participants' customer base, as directed and decided by the Chairperson.

- Facilitate maximum availability of Medical Devices to the nation or particular geographies by deconflicting overlapping supply chain demands placed upon Members, as directed and decided by the Chairperson.

- Facilitate the efficient distribution of Medical Devices by deconflicting overlapping distribution chain activities of Members, as directed and decided by the Chairperson.

- Create a process for and collaborate in the Allocation of Medical Devices nationwide or in particular geographies consistent with the decisions made by the Chairperson.

- Create a process for and collaborate in meeting any other exigent requirements throughout the nation or particular geographies consistent with the overall strategy prepared by this Sub-Committee.

(8) Provide data and information necessary to validate the efforts of the Sub-Committee including the actual and planned amounts of Medical Devices to be distributed throughout the Nation, as determined by the Chairperson.

(9) Provide feedback to the Sub-Committee on the outcomes of the collective efforts of the Sub-Committee Members and any impediments or bottlenecks.

(10) Advise the Chairperson whether additional Participants or Attendees should be invited to join this Plan and Sub-Committee.

(11) Carry out other activities regarding Medical Devices as identified by Sub-Committees under this Plan as determined and directed by the Chairperson necessary to address the COVID-19 virus' direct threat to the national defense, where such activities have been reviewed and approved by DOJ and FTC and received concurrence from Sub-Committee members.

F. Information Management and Responsibilities

FEMA will request only that data and information from Sub-Committee Participants that is necessary to meet the objectives of the Plan and consistent with the scope of the relevant Sub-Committees. Upon signing a Plan of Action Agreement for this Plan, FEMA requests that Participants endeavor to cooperate with diligence and speed, and to the extent permissible under this Plan, and share with FEMA data and information necessary to meet the objectives of this Plan.

Sub-Committee Participants agree to share with FEMA the following data with diligence and speed, to the extent permissible under this Plan, and abide by the following guidelines, where feasible and consistent with the data that is owned by each Sub-Committee Participant:

(1) In general, Participants will not be asked to share Competitively Sensitive Information directly with other Participants.

(2) FEMA will only request direct sharing of Competitively Sensitive Information among Participants during Exigent Circumstances where there is a mission critical need or timeline such that sharing only through FEMA is impractical or threatens the outcome of the Plan or Sub-Committee action. Such requests, if made, will be only among Participants whose participation is necessary to meet the objectives of the Plan, will be limited in scope to the greatest extent possible, and will be shared only pursuant to safeguards subject to prior review and audit by DOJ and FTC. Direct sharing of Competitively Sensitive Information with other Participants will be limited in scope and circumstances to the greatest extent possible. Participants may not share Competitively Sensitive Information directly with other Participants unless specifically requested by FEMA, in consultation with DOJ and FTC. All Competitively Sensitive Information delivered to FEMA or to another Sub-Committee Participant shall be delivered by secure means, for example, password-protected or encrypted electronic files or drives with the password/key delivered by separate communication or method or via upload to an appropriately secure web portal as directed by FEMA. All data delivered to the web portal designated by FEMA is deemed to be Competitively Sensitive Information.

(3) To allow FEMA to identify and appropriately protect documents containing Competitively Sensitive Information by the Sub-Committee

Participant providing the documents, the Sub-Committee Participant will make good faith efforts to designate any Competitively Sensitive Information by placing restrictive markings on documents and things considered to be competitively sensitive, the restrictive markings being sufficiently clear in wording and visibility to indicate the restricted nature of the data. The Sub-Committee Participant will identify Competitively Sensitive Information that is disclosed verbally by oral warning. Information designated as competitively sensitive will, to the extent allowed by law, be presumed to constitute confidential or privileged commercial or financial information, and be provided by the Sub-Committee Participant to FEMA with the expectation that it will be kept confidential by both parties, as such terms are understood in accordance with 5 U.S.C. 552(b)(4) of the Freedom of Information Act and federal judicial interpretations of this statute. FEMA agrees that to the extent any information designated as competitively sensitive by a Sub-Committee Participant is responsive to a request for disclosure under the Freedom of Information Act, FEMA will consult with the Sub-Committee Participant and afford the Participant ten (10) working days to object to any disclosure by FEMA.

(4) FEMA will make good faith efforts to appropriately recognize unmarked Documents containing Competitively Sensitive Information as Competitively Sensitive Information. However, FEMA cannot guarantee that all unmarked Documents will be recognized as being Competitively Sensitive Information and protected from disclosure to third parties. If the unmarked Documents have not been disclosed without restriction outside of FEMA, the Sub-Committee Participant may retroactively request to have appropriate designations placed on the Documents. If the unmarked Documents have been disclosed without restriction outside of FEMA, FEMA will, to the extent practicable, remove any requested information from public forums controlled by FEMA and will work promptly to request that a receiving party return or destroy disclosed unmarked Documents if requested by the Sub-Committee Participant.

(5) Competitively Sensitive Information may be used by FEMA, alone or in combination with additional information, including Documents and Competitively Sensitive Information received from third parties, to support FEMA's implementation of this Plan as determined by the Chairperson. In all situations, FEMA will aggregate and

anonymize Competitively Sensitive Information to the greatest extent possible to protect the interests retained by the owners of the data while still allowing the objectives of the Plan and Sub-Committee to be achieved. To the greatest extent possible, such aggregation will render the competitively sensitive nature of the Competitively Sensitive Information of the Sub-Committee Participant no longer recognizable in a commercially sensitive manner, and without sufficient information to enable, by inference or otherwise, attribution to Sub-Committee Participant or its affiliates (as clearly identified and disclosed to FEMA). Any disclosure of Competitively Sensitive Information by FEMA, within or outside a Sub-Committee, will be subject to review and approval by DOJ and FTC.

(6) Except as otherwise expressly permitted by applicable federal law, FEMA shall not disclose any Competitively Sensitive Information or use any Competitively Sensitive Information for any purpose other than in connection with the purposes of this Plan, and FEMA will not sell any Competitively Sensitive Information of any Sub-Committee Participant.

(7) Except as described below, FEMA may disclose Competitively Sensitive Information only to its employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors). Any individual with access to Competitively Sensitive Information will be expected to comply with the terms of this Plan.

a. *Information Sharing within the Sub-Committee:* FEMA may share Competitively Sensitive Information with Sub-Committee Participants and Federal Representatives of the Plan, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) where there is a need to know and where disclosure is reasonably necessary in furtherance of implementing the Plan. FEMA will aggregate and anonymize data prior to sharing with the Sub-Committee Participants to the greatest extent possible while still allowing the objectives of the Plan to be achieved, and will not share data—particularly to competitors of the submitter—prior to consultation with and approval by the DOJ and FTC.

i. Sub-Committee Participants, when providing Competitively Sensitive Information to FEMA, may request that this Information not be shared with other Sub-Committee Participants. Where these requests are made in good

faith and are reasonable in nature, FEMA will respect these requests to the greatest extent possible and will consult the owner of the data prior to any release made to Sub-Committee Participants.

b. *Restricted Reports.* FEMA may communicate Competitively Sensitive Information to appropriate government officials through Restricted Reports. The information contained in Restricted Reports shall be aggregated and anonymized to the greatest extent possible, while recognizing that these officials may need a certain amount of granularity and specificity of information to appropriately respond to COVID-19. FEMA will aim to aggregate data to the County level, and will not share Restricted Reports prior to consultation and approval from the DOJ and FTC. FEMA may disclose Restricted Reports to relevant White House and Administration officials and State Governors, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) who have a need to know and to whom such disclosure is reasonably necessary solely in furtherance of the implementation of this Plan. FEMA shall take appropriate action (by instructions, agreement, or otherwise) to ensure that receiving parties comply with all data-sharing confidentiality and obligations under this Plan as if such persons or entities had been parties to this Plan.

c. *Public Reports.* FEMA may share information with the public through Public Reports. Data contained in Public Reports shall be fully aggregated and anonymized. Public Reports shall be aggregated to at least a state level and may be publicly disclosed after consultation and approval from the DOJ and FTC.

(8) Where possible and not obviated by Exigent Circumstances, FEMA will notify Sub-Committee Participants prior to the release of any Competitively Sensitive Information that has not been fully aggregated and anonymized. In consultation with DOJ and FTC, FEMA will consider any good-faith requests made by Sub-Committee members to hold the release of data or requests for further aggregation or anonymization. In general, FEMA will not provide notification prior to the release of *Public Reports*, under the presumption that the data in these reports has already been fully anonymized and de-identified.

(9) Any party receiving Competitively Sensitive Information through this Plan shall use such information solely for the purposes outlined in the Plan and take

steps, such as imposing previously approved firewalls or tracking usage, to prevent misuse of the information. Disclosure and use of Competitively Sensitive Information will be limited to the greatest extent possible, and any party receiving Competitively Sensitive Information shall follow the procedures outlined in paragraph 7 above.

(10) At the conclusion of a Participant's involvement in a Plan—due to the deactivation of the Plan or due to the Participant's withdrawal or removal—each Participant will be requested to sequester any and all Competitively Sensitive Information received through participation in the Plan. This sequestration shall include the deletion of all Competitively Sensitive Information unless required to be kept pursuant to the Record Keeping requirements as described *supra*, Section I, 44 CFR part 332, or any other provision of law.

G. Oversight

Each Sub-Committee Chairperson is responsible for ensuring that the Attorney General, or suitable delegate(s) from the DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under this Plan, including activation, deactivation, and scheduling of meetings. The Attorney General, the FTC Chair, or their delegates may attend Sub-Committee meetings and request to be apprised of any activities taken in accordance with activities under this Plan. DOJ or FTC Representatives may request and review any proposed action by the Sub-Committee or Sub-Committee Participants undertaken pursuant to this Plan, including the provision of data. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she shall provide warning and guidance to the Sub-Committee as soon as the potential issue is identified. If questions arise about the antitrust protections applicable to any particular action, FEMA may request DOJ, in consultation with the FTC, provide an opinion on the legality of the action under relevant DPA antitrust protections.

XXII. Establishment of the Sub-Committees

This Plan establishes Sub-Committees to implement the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices Critical to COVID-19 Response to provide the Federal Government and the Participants a forum to maximize the manufacture and efficient distribution

of selected types of Medical Devices and to create a prioritization protocol based upon identified types of Medical Device End-Users and their demonstrated or projected requirements, and demonstrated or projected geographic and regional areas of need. The outcome should include a framework to expeditiously meet any Medical Device needs in Exigent Circumstances anywhere in the Nation, and to ensure that actions to support Medical Device stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Medical Device recipients. A Sub-Committee Chairperson designated by the Chairperson will convene and preside over each Sub-Committee. Sub-Committees will not be used for contract negotiations or contract discussions between the Participants and the Federal Government; such negotiations or discussions will be in accordance with applicable federal contracting policies and procedures. However, this shall not limit any discussion within a Sub-Committee about the operational utilization of existing and potential contracts between the Participants and Representatives when seeking to align their use with overall manufacturing and distribution efforts consistent with this Plan.

Each Sub-Committee will consist of designated Representatives from FEMA, HHS, other federal agencies with equities in this Plan, and each Sub-Committee Participant. The Attorney General and Chair of the FTC, or their delegates, may also join each Sub-Committee and attend meetings at their discretion. Attendees may also be invited at the discretion of a Sub-Committee Chairperson as subject matter experts, to provide technical advice, or to represent other government agencies, but will not be considered part of the Sub-Committee.

To the extent necessary to respond to the Pandemic, only at the explicit direction of a Sub-Committee Chairperson, and subject to the provisions of Section V(B), Sub-Committee Members may be asked to provide technical advice, share information, help identify and validate places and resources of the greatest need, help project future manufacturing and distribution demands, assist in identifying and resolving the allocation of scarce resources amongst all necessary public and private sector domestic needs under Exigent Circumstances, and take any other necessary actions to maximize the timely manufacture and distribution of Medical Devices as determined

necessary by FEMA to respond to the Pandemic. A Sub-Committee Chairperson or his or her designee, at the Sub-Committee Chairperson's sole discretion, will make decisions on these issues in order to ensure the maximum efficiency and effectiveness in the use of Sub-Committee Member's resources. All Sub-Committee Participants will be invited to open Sub-Committee meetings. For selected Sub-Committee meetings, attendance may be limited to designated Sub-Committee Participants to meet specific operational requirements, as determined by FEMA.

Each Sub-Committee Chairperson shall notify the Attorney General, the Chair of the FTC, Representatives, and Participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Plan. Additionally, each Sub-Committee Chairperson shall provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. A Sub-Committee Chairman may restrict attendance at meetings only on the grounds outlined by 44 CFR 332.5(c)(1)–(3). If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed pursuant to 44 CFR 332.3(c)(2).

The Sub-Committee Chairperson shall establish the agenda for each meeting, be responsible for adherence to the agenda, and provide for a written summary or other record of each meeting and provide copies of transcripts or other records to FEMA, the Attorney General, the Chair of the FTC, and all Sub-Committee Participants. The Chairperson shall take necessary actions to protect from public disclosure any data discussed with or obtained from Sub-Committee Participants which a Sub-Committee Participant has identified as a trade secret or as privileged and confidential in accordance with DPA sections 708(h)(3) and 705(d), or which qualifies for withholding under 44 CFR 332.5.

XXIII. Application and Agreement

The Sub-Committee Participant identified below hereby agrees to join in the Federal Emergency Management Agency sponsored Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices To Respond to COVID-19 under the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to

Respond to a Pandemic and to become a Participant in one or more Sub-Committees established by this Plan. This Plan will be published in the **Federal Register**. This Plan is authorized under section 708 of the Defense Production Act of 1950, as amended. Regulations governing the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and all subsequent Plans of Action at 44 CFR part 332. The applicant, as a Sub-Committee Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations at 44 CFR part 332, and the terms of this Plan.

XXIV. Assignment

No Sub-Committee Participant may assign or transfer this Plan, in whole or in part, or any protections, rights or obligations hereunder without the prior written consent of the Sub-Committee Chairperson. When requested, the Sub-Committee Chairperson will respond to written requests for consent within 10 (ten) business days of receipt.

(Company name)

(Name of authorized representative)

(Signature of authorized representative)

(Date)

Administrator (Sponsor)

(Date)

Text of the Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases To Respond to COVID-19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Plan of Action To Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases To Respond to COVID-19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Preface

Pursuant to section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4558), the Federal Emergency Management Agency (FEMA) Administrator (Administrator), after consultation with the Secretary of

the Department of Health and Human Services (HHS), the Attorney General of the United States (Attorney General), and the Chair of the Federal Trade Commission (FTC), developed a Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement), 85 FR 50035 (August 17, 2020). The Voluntary Agreement, which operates through a series of Plans of Action, maximizes the manufacture and efficient distribution of Critical Healthcare Resources nationwide to respond to a pandemic by establishing unity of effort between Participants and the Federal Government for integrated coordination, planning, information sharing with FEMA, as authorized by FEMA, and allocation and distribution of Critical Healthcare Resources.

This document establishes a Plan of Action (Plan) to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID-19. This Plan will be implemented under the

Voluntary Agreement by several Sub-Committees.

- (1) Sub-Committee to Define COVID-19 Medical Gas Requirements,
- (2) Sub-Committee for Oxygen,
- (3) Sub-Committee for Nitrous Oxide,
- (4) Sub-Committee for Carbon

Dioxide,

- (5) Sub-Committee for Heliox,
- (6) Sub-Committee for Nitrogen (Medical Liquid Nitrogen), and
- (7) Sub-Committee for Medical Air.

The Sub-Committee to Define COVID-19 Medical Gas Requirements will be formed first.

FEMA may establish additional Sub-Committees under this Plan, so long as:

- (1) The Sub-Committee addresses one specific and well-defined category of Medical Gases; and
- (2) The Sub-Committee is recommended by the Sub-Committee to Define COVID-19 Medical Gas Requirements.

The purpose of the Plan and the Sub-Committees is to maximize the manufacture and efficient distribution of selected types of Medical Gases and

create a prioritization protocol for End-Users based upon their demonstrated or projected requirements including geographic and regional circumstances. The primary goal of the Plan is to create a mechanism to immediately meet exigent Medical Gas requests anywhere in the Nation and to ensure that actions to support Medical Gas stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Medical Gas recipients. When the requirements of the Plan are met, it affords Sub-Committee Participants defenses to civil and criminal actions brought under the antitrust laws (or any similar law of any state) for actions taken within the scope of the Plan. The Plan is designed to foster a close working relationship among FEMA, HHS, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

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XXV. Purpose

A pandemic may present conditions that pose a direct threat to the national defense of the United States or its preparedness programs such that, pursuant to DPA section 708(c)(1), an agreement to collectively coordinate, plan, and collaborate for the manufacture and distribution of Medical Gases is necessary for the national defense. This Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID-19 is established under the Voluntary Agreement and establishes seven Sub-Committees to oversee and implement the Plan. The Plan and Sub-Committees will optimize the manufacture and the efficient distribution of selected types of Medical Gases and create a

prioritization protocol for End-Users based upon their demonstrated or projected requirements.

XXVI. Authorities

Section 708, Defense Production Act (50 U.S.C. 4558); sections 402(2) & 501(b), Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207); sections 503(b)(2)(B) & 504(a)(10) & (16) of the Homeland Security Act of 2002 (6 U.S.C. 313(b)(2)(B), 314(a)(10) & (16)); sections 201, 301, National Emergencies Act (50 U.S.C. 1601 *et seq.*); section 319, Public Health Service Act (42 U.S.C. 247d); Executive Order (E.O.) 13911, 85 FR 18403 (March 27, 2020); Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use, 85 FR 20195 (April 10, 2020). Pursuant to DPA

section 708(f)(1)(A), the Administrator certifies that this Plan is necessary for the national defense.

XXVII. General Provisions

BB. Definitions

Administrator

The FEMA Administrator is the Sponsor of the Voluntary Agreement. Pursuant to a delegation or redelegation of the functions given to the President by DPA section 708, the Administrator proposes and provides for the development and carrying out of the Voluntary Agreement, including through the development and implementation of Plans of Action. The Administrator is responsible for carrying out all duties and responsibilities required by 50 U.S.C. 4558 and 44 CFR part 332 and for

appointing one or more Chairpersons to manage and administer the Committee and all Sub-Committees formed to carry out the Voluntary Agreement.

Agreement

The Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement).

Allocation

The process of determining and directing the relative distribution among one or more competing requests from End-Users for the same Medical Gases. Through the Allocation process, FEMA—with participation from Sub-Committee Participants—will assess the actual needs of End-Users and determine how to divide the available and projected supply of Medical Gases to minimize impacts to life, safety, and economic disruption associated with shortages of Medical Gases. Allocation will take place only under Exigent Circumstances. FEMA retains decision-making authority for all Allocation under this Plan.

Attendees

Subject matter experts, invited by the Chairperson or a Sub-Committee Chairperson to attend meetings authorized under the Voluntary Agreement or this Plan, to provide technical advice or to represent other government agencies or interested parties. Invitations to attendees will be extended as required for Committee or Sub-Committee meetings and deliberations.

Chairperson

FEMA senior executive(s), appointed by the Administrator, to chair the Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic (Committee). The Chairperson shall be responsible for the overall management and administration of the Committee, the Voluntary Agreement, and Plans of Action developed under the Voluntary Agreement while remaining under the supervision of the Administrator; shall initiate, or approve in advance, each meeting held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the Voluntary Agreement; appoint one or more co-Chairpersons to chair the Committee, and otherwise shall carry out all duties and responsibilities assigned to him. With the approval of the Administrator, the Chairperson may create one or more Sub-Committees, and may appoint one or more Sub-

Committee Chairpersons to chair the Sub-Committees, as appropriate.

Committee

Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic established under the Voluntary Agreement.

Competitively Sensitive Information

Competitively Sensitive Information that is shared pursuant to this Plan may include any Document or other tangible thing or oral transmission that contains financial, business, commercial, scientific, technical, economic, or engineering information or data, including, but not limited to

- financial statements and data,
- customer and supplier lists,
- price and other terms of sale to customers,
- sales records, projections and forecasts,
- inventory levels,
- capacity and capacity utilization,
- cost information,
- sourcing and procurement information,
- manufacturing and production information,
- delivery and shipping information,
- systems and data designs, and
- methods, techniques, processes, procedures, programs, codes, or similar information,

whether tangible or intangible, and regardless of the method of storage, compilation, or recordation, if the owner thereof has taken reasonable measures to protect the information from disclosure to the public or competitors. These measures may be evidenced by marking or labeling the items as “competitively sensitive information” during submission to FEMA or in the Participant’s customary and existing treatment of such information (regardless of labeling).

All Competitively Sensitive Information provided by a Sub-Committee Participant as described herein is deemed Competitively Sensitive Information, except for Information that:

- a. Is published or has been made publicly available at the time of disclosure by the Sub-Committee Participant;
- b. was in the possession of, or was lawfully and readily available to, FEMA from another source at the time of disclosure without breaching any obligation of confidentiality applicable to the other source; or
- c. was independently developed or acquired without reference to or reliance upon the Sub-Committee

Participant’s Competitively Sensitive Information;

Where information deemed Competitively Sensitive Information is required to be disclosed by law, regulation, or court order, the “Competitively Sensitive” (or substantially similar) label will continue to attach to all information and portion(s) of documents that are not made public through the required disclosure.

Document

Any information, on paper or in electronic/audio/visual format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Participant and used or shared in the course of participation in the Voluntary Agreement or a subsequent Plan of Action.

End-User

This includes all direct and ancillary medical support including, but not limited to, hospitals, independent healthcare providers, nursing homes, medical laboratories, dental care providers, independent physician offices, first responders, alternate care facilities and the general public that reasonably represents the totality of the nation’s response to COVID-19.

Exigent Circumstances

As determined by the Chairperson, the actual or forecasted shortage of a particular type or types of Medical Gases which likely cannot be fulfilled via usual market mechanisms for an acute, critical time period, and where immediate and substantial harm is projected to occur from lack of intervention.

Medical Gases

Defined under Section 360ddd of the Food, Drug and Cosmetic Act (21 U.S.C. 360ddd) as a drug that is manufactured or stored in a liquefied, nonliquefied, or cryogenic state, and administered as a gas. Medical Gases include, but are not limited to, Oxygen, Nitrogen, Nitrous oxide, Carbon dioxide, Helium, Carbon monoxide, and Medical air, so long as such gases meet the Standards established by the United States Pharmacopeia and the National Formulary (USP-NF).

Pandemic

A Pandemic is defined as an epidemic that has spread to human populations across a large geographic area that is subject to one or more declarations under the National Emergencies Act, the Public Health Service Act, or the Robert

T. Stafford Disaster Relief and Emergency Assistance Act, or if the Administrator determines that one or more declarations is likely to occur and the epidemic poses a direct threat to the national defense or its preparedness programs. For example, Coronavirus Disease 2019 (COVID-19).

Participant

An individual, partnership, corporation, association, or private organization, other than a federal agency, that has substantive capabilities, resources or expertise to carry out the purpose of the Voluntary Agreement, that has been specifically invited to participate in the Voluntary Agreement by the Chairperson, and that has applied and agreed to the terms of the Voluntary Agreement. "Participant" includes a corporate or non-corporate entity entering into the Voluntary Agreement and all subsidiaries and affiliates of that entity in which that entity has 50 percent or more control either by stock ownership, board majority, or otherwise. The Administrator may invite Participants to join the Voluntary Agreement at any time during its effective period.

Plan of Action (Plan)

This document. A documented method, pursuant to 50 U.S.C. 4558(b)(2), proposed by FEMA to implement a particular set of activities under the Voluntary Agreement, through a Sub-Committee focused on a particular Critical Healthcare Resource, or pandemic response workstream or functional area necessary for the national defense.

Plan of Action Agreement

A separate commitment made by Participants upon invitation and agreement to participate in a Plan of Action as part of one or more Sub-Committees. Completing the Plan of Action Agreement confers responsibilities on the Participant consistent with those articulated in the Plan of Action and affords Participants a defense against antitrust claims under section 708 for actions taken to develop or carry out the Plan of Action and the appropriate Sub-Committee(s), as described in Section IV below.

Representatives

The representatives the Administrator identifies and invites to the Committee from FEMA, HHS, and other federal agencies with equities in this Plan, and empowered to speak on behalf of their agencies' interests. The Attorney General and the Chair of the FTC, or

their delegates, may also attend any meeting as a Representative.

Sub-Committee

A body formed by the Administrator from select Participants to implement a Plan of Action.

Sub-Committee Chairperson

FEMA executive, appointed by the Chairperson, to chair a Sub-Committee to implement a Plan of Action. The Sub-Committee Chairperson shall be responsible for the overall management and administration of the Sub-Committee in furtherance of this Plan while remaining under the supervision of the Administrator and the Chairperson.

Sub-Committee Members

Collectively the Sub-Committee Chairperson(s), Representatives, and Sub-Committee Participants. Jointly responsible developing and executing this Plan.

Sub-Committee Participant

A subset of Participants of the Committee, that have been specifically invited to participate in a Sub-Committee by the Sub-Committee Chairperson, and that have applied and agreed to the terms of this Plan and signed the Plan of Action Agreement. The Sub-Committee Chairperson may invite Participants in the Committee to join a Sub-Committee as a Sub-Committee Participant at any time during the Plan's effective period.

CC. Plan of Action Participation

This Plan will be carried out by a subset of Participants in the Voluntary Agreement through several Sub-Committees:

- (1) Sub-Committee to Define COVID-19 Medical Gas Requirements,
- (2) Sub-Committee for Oxygen,
- (3) Sub-Committee for Nitrous Oxide,
- (4) Sub-Committee for Carbon Dioxide,
- (5) Sub-Committee for Heliox,
- (6) Sub-Committee for Nitrogen (Medical Liquid Nitrogen), and
- (7) Sub-Committee for Medical Air.

The Sub-Committee to Define COVID-19 Medical Gas Requirements will be formed first. FEMA may establish additional Sub-Committees under this Plan, so long as:

- (1) The Sub-Committee addresses one specific and well-defined category of Medical Gases; and
- (2) The Sub-Committee is recommended by the Sub-Committee to Define COVID-19 Medical Gas Requirements.

Each Sub-Committee will consist of the (1) Sub-Committee Chairperson(s),

(2) Representatives from FEMA, HHS, the Department of Justice (DOJ), and other federal agencies with equities in this Plan, and (3) Sub-Committee Participants that have substantive capabilities, resources or expertise to carry out the purpose of this Plan and have signed the Plan of Action Agreement. The Chairperson shall invite Sub-Committee Participants who, in his or her determination, are reasonably representative of the appropriate industry or segment of such industry. Other Attendees—invited by the Sub-Committee Chairperson as subject matter experts to provide technical advice or to represent the interests of other government agencies or interested parties—may also participate in Sub-Committee meetings. The naming of these Sub-Committees does not commit the Administrator to creating them unless and until circumstances dictate.

DD. Effective Date and Duration of Participation

This Plan is effective immediately upon satisfaction of the requirements of DPA section 708(f)(1). This Plan shall remain in effect until terminated in accordance with 44 CFR 332.4. It shall be effective for no more than five (5) years from August 17, 2020, when the requirements of DPA section 708(f)(1) were satisfied for the Voluntary Agreement, unless otherwise terminated pursuant to DPA section 708(h)(9) and 44 CFR 332.4 or extended as set forth in DPA section 708(f)(2). No action may take place under this Plan until it is activated, as described in Section III(E), below.

EE. Withdrawal

Participation in the Plan is voluntary, as is the acceptance of most obligations under the Plan. Sub-Committee Participants may withdraw from this Plan or from an individual Sub-Committee at any point, subject to the fulfillment of obligations previously agreed upon by the Participant prior to the date of withdrawal. Note that the obligations outlined in V.B regarding information management and associated responsibilities apply once a party has shared or received information through a Sub-Committee, and remain in place after the party's withdrawal from the Sub-Committee or Plan. If a Sub-Committee Participant indicates an intent to withdraw from the Plan due to a modification or amendment of the Plan (described below), the Sub-Committee Participant will not be required to perform actions directed by that modification or amendment. *Withdrawal from the Plan will automatically trigger withdrawal from*

all Sub-Committees; however, a Participant may withdraw from a Sub-Committee without also withdrawing from the Plan or other Sub-Committees.

To withdraw from the Plan or from an individual Sub-Committee, a Participant must provide written notice to the Administrator at least fifteen (15) calendar days prior to the effective date of that Sub-Committee Participant's withdrawal specifying the scope of withdrawal. Following receipt of such notice, the Administrator will inform the other Sub-Committee Participants of the date and the scope of the withdrawal.

Upon the effective date of the withdrawal from the Plan, the Sub-Committee Participant must cease all activities under the Plan. Upon the effective date of the withdrawal from one or more Sub-Committee(s), the Sub-Committee Participant must cease all activities under the Plan that pertain to the withdrawn Sub-Committee(s).

FF. Plan of Action Activation and Deactivation

The Administrator, in consultation with the Chairperson and Sub-Committee Chairperson, will invite a select group of Participants in the Voluntary Agreement to form the following Sub-Committees, beginning with the Sub-Committee to Define COVID-19 Medical Gas Requirements, which will be responsible for implementing this Plan.

- (1) Sub-Committee to Define COVID-19 Medical Gas Requirements,
- (2) Sub-Committee for Oxygen,
- (3) Sub-Committee for Nitrous Oxide,
- (4) Sub-Committee for Carbon Dioxide,
- (5) Sub-Committee for Heliox,
- (6) Sub-Committee for Nitrogen (Medical Liquid Nitrogen), and
- (7) Sub-Committee for Medical Air.

FEMA may establish additional Sub-Committees under this Plan, so long as:

- (1) The Sub-Committee addresses one specific and well-defined category of Medical Gases; and
- (2) The Sub-Committee is recommended by the Sub-Committee to Define COVID-19 Medical Gas Requirements.

This Plan will be activated for each invited Participant when the Participant executes a Plan of Action Agreement, and a Participant may not participate in a Sub-Committee until the Plan of Action Agreement is executed. Participants will be invited to join this Plan at the discretion of the Chairperson or the Sponsor to the Voluntary Agreement. Participants will be further invited to attend specific meetings of

one or more Sub-Committees at the discretion of the Chairperson.

GG. Rules and Regulations

Sub-Committee Participants acknowledge and agree to comply with all provisions of DPA section 708, as amended, and regulations related thereto which are promulgated by FEMA, the Department of Homeland Security, HHS, the Attorney General, and the FTC. FEMA has promulgated standards and procedures pertaining to voluntary agreements in 44 CFR part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

HH. Modification and Amendment

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may terminate or modify, in writing, this Plan at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may terminate or modify, in writing, this Plan at any time. Sub-Committee Participants may propose modifications or amendments to the Plan or to the Sub-Committees at any time.

Where possible, material modifications to the Plan or a Sub-Committee will be subject to a 30 calendar day delayed implementation and opportunity for notice and comment by Sub-Committee Participants to the Chairperson. This delayed implementation period may be shortened or eliminated if the Administrator deems it necessary. The Administrator shall inform Sub-Committee Participants of modifications or amendments to the Plan or to the Sub-Committees as they are proposed and issued.

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may remove Sub-Committee Participants from the Plan or from a Sub-Committee at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may remove Sub-Committee Participants from this Plan or from a Sub-Committee at any time. If a Participant is removed from the Plan or from a Sub-Committee, the Participant may request written notice of the reasons for removal from the Chairperson, who shall provide such notice in a reasonable time period.

II. Expenses

Participation in this Plan or in a Sub-Committee does not confer funds to Sub-Committee Participants, nor does it limit or prohibit any pre-existing source of funds. Unless otherwise specified, all

expenses, administrative or otherwise, incurred by Sub-Committee Participants associated with participation in this Plan or a Sub-Committee shall be borne exclusively by the Sub-Committee Participants.

JJ. Record Keeping

Each Sub-Committee Chairperson shall have primary responsibility for maintaining records in accordance with 44 CFR part 332 and shall be the official custodian of records related to carrying out this Plan. Each Sub-Committee Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Sub-Committee Participants or with any other member of the Sub-Committee, including drafts, related to the carrying out of this Plan or incorporating data or information received in the course of carrying out this Plan. Each Sub-Committee Participant agrees to produce to the Administrator, the Attorney General, and the Chair of the FTC upon request any item that this section requires the Participant to maintain. Any record maintained in accordance with 44 CFR part 332 shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with DPA section 705(d), and 44 CFR 332.5.

XXVIII. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

This defense shall not apply to any actions taken after the termination of this Plan. Immediately upon modification of this Plan, no defense to antitrust claims under Section 708 shall be available to any subsequent action that is beyond the scope of the modified Plan. The Sub-Committee Participant asserting the defense bears the burden of proof to establish the elements of the defense. The defense shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

XXIX. Terms and Conditions

As the sponsoring agency, FEMA will maintain oversight over Sub-Committee activities and direct and supervise actions taken to carry out this Plan, including by retaining decision-making authority over actions taken pursuant to the Plan to ensure such actions are necessary to address a direct threat to the national defense. The Attorney General and the Chair of the FTC will monitor activities of the Sub-Committees to ensure they execute their responsibilities in a manner consistent with this Plan and their actions have the least anticompetitive effects possible.

A. Plan of Action Execution

This Plan will be used to support the following objectives to respond to a Pandemic by maximizing the manufacture and efficient distribution of selected types of Medical Gases and creating a prioritization protocol for End-Users based upon their demonstrated or projected requirements and taking into account geographic and regional circumstances. Each Sub-Committee will undertake the following Objectives for the Medical Gases within its area of jurisdiction.

1. Objectives

(1) Optimize the timely production of sufficient quantities of Medical Gases to reduce loss of life from the COVID-19 virus.

(2) Ensure Medical Gases are distributed effectively across the whole community nationally based on risk.

(3) Balance restoration and maintenance of the nation's stockpile of Medical Gases with near-term requirements.

(4) Establish a process for FEMA Allocation of Medical Gases nationwide.

(5) Ensure ongoing competition in the manufacture and distribution of Medical Gases to the greatest extent possible under the DPA.

2. Actions

Sub-Committee Participants may be asked to support these objectives by taking the following specific actions:

(1) Assist the Chairperson in scoping each Sub-Committee and prioritizing among Sub-Committees based on each Medical Gas' importance to the national response to COVID-19 and whether it can be reasonably inferred, based upon the best evidence available, that the current and projected supply measured against current and projected demand may not adequately meet the Medical Gas requirements to all identified End-Users or regional or geographic areas of the country as result of measures taken to respond to COVID-19.

(2) Provide input to the Chairperson in creating a prioritized list of Medical Gas End-Users by categories for each type of Medical Gases identified by each Sub-Committee and ascertaining the relative demand and supply of Medical Gases among and within those End User categories. Prioritization shall be decided by the Chairperson, based upon each item's importance, reflecting the consensus views of the Sub-Committee Members that it represents the most effective way to save lives in responding to the COVID-19 pandemic. This list may be updated throughout the life of the Plan based upon either short term or long-term demands. These categories should be considered holistically in terms of the Whole-of-Nation response to COVID-19.

(3) Evaluate the domestic supply of Medical Gases and identify when the expansion of the domestic manufacture of Medical Gases may be necessary, as directed and decided by the Chairperson.

(4) Provide information, assist, and validate, as necessary as decided by the Chairperson, demand projections for Medical Gases.

(5) Create a process for and collaborate in the evaluation of competing claims for Medical Gases from End-Users.

(6) Prepare a general strategy to accomplish the activities listed in V(A)(2)(7) below regarding activities in Exigent Circumstances consistent with the decisions made by the Chairperson.

(7) In Exigent Circumstances, with review and concurrence in all possible instances by DOJ in consultation with FTC:

- Facilitate maximum availability of Medical Gases to the nation or particular geographies by deconflicting overlapping demands from the collective Participants' customer base, as directed and decided by the Chairperson.

- Facilitate maximum availability of Medical Gases to the nation or particular geographies by deconflicting overlapping supply chain demands placed upon Members, as directed and decided by the Chairperson.

- Facilitate the efficient distribution of Medical Gases by deconflicting overlapping distribution chain activities of Members, as directed and decided by the Chairperson.

- Create a process for and collaborate in the Allocation of Medical Gases nationwide or in particular geographies consistent with the decisions made by the Chairperson.

- Create a process for and collaborate in meeting any other exigent requirements throughout the nation or particular geographies consistent with the overall strategy prepared by this Sub-Committee.

(8) Provide data and information necessary to validate the efforts of the Sub-Committee including the actual and planned amounts of Medical Gases to be distributed throughout the Nation, as determined by the Chairperson.

(9) Provide feedback to the Sub-Committee on the outcomes of the collective efforts of the Sub-Committee Members and any impediments or bottlenecks.

(10) Advise the Chairperson whether additional Participants or Attendees should be invited to join this Plan and Sub-Committee.

(11) Carry out other activities regarding Medical Gases as identified by Sub-Committees under this Plan as determined and directed by the Chairperson necessary to address the COVID-19 virus' direct threat to the national defense, where such activities have been reviewed and approved by DOJ and FTC and received concurrence from Sub-Committee members.

H. Information Management and Responsibilities

FEMA will request only that data and information from Sub-Committee Participants that is necessary to meet the objectives of the Plan and consistent with the scope of the relevant Sub-Committees. Upon signing a Plan of Action Agreement for this Plan, FEMA requests that Participants endeavor to cooperate with diligence and speed, and to the extent permissible under this Plan, and share with FEMA data and information necessary to meet the objectives of this Plan.

Sub-Committee Participants agree to share with FEMA the following data with diligence and speed, to the extent permissible under this Plan, and abide by the following guidelines, where feasible and consistent with the data

that is owned by each Sub-Committee Participant:

(1) In general, Participants will not be asked to share Competitively Sensitive Information directly with other Participants.

(2) FEMA will only request direct sharing of Competitively Sensitive Information among Participants during Exigent Circumstances where there is a mission critical need or timeline such that sharing only through FEMA is impractical or threatens the outcome of the Plan or Sub-Committee action. Such requests, if made, will be only among Participants whose participation is necessary to meet the objectives of the Plan, will be limited in scope to the greatest extent possible, and will be shared only pursuant to safeguards subject to prior review and audit by DOJ and FTC. Direct sharing of Competitively Sensitive Information with other Participants will be limited in scope and circumstances to the greatest extent possible. Participants may not share Competitively Sensitive Information directly with other Participants unless specifically requested by FEMA, in consultation with DOJ and FTC. All Competitively Sensitive Information delivered to FEMA or to another Sub-Committee Participant shall be delivered by secure means, for example, password-protected or encrypted electronic files or drives with the password/key delivered by separate communication or method or via upload to an appropriately secure web portal as directed by FEMA. All data delivered to the web portal designated by FEMA is deemed to be Competitively Sensitive Information.

(3) To allow FEMA to identify and appropriately protect documents containing Competitively Sensitive Information by the Sub-Committee Participant providing the documents, the Sub-Committee Participant will make good faith efforts to designate any Competitively Sensitive Information by placing restrictive markings on documents and things considered to be competitively sensitive, the restrictive markings being sufficiently clear in wording and visibility to indicate the restricted nature of the data. The Sub-Committee Participant will identify Competitively Sensitive Information that is disclosed verbally by oral warning. Information designated as competitively sensitive will, to the extent allowed by law, be presumed to constitute confidential or privileged commercial or financial information, and be provided by the Sub-Committee Participant to FEMA with the expectation that it will be kept confidential by both parties, as such

terms are understood in accordance with 5 U.S.C. 552(b)(4) of the Freedom of Information Act and federal judicial interpretations of this statute. FEMA agrees that to the extent any information designated as competitively sensitive by a Sub-Committee Participant is responsive to a request for disclosure under the Freedom of Information Act, FEMA will consult with the Sub-Committee Participant and afford the Participant ten (10) working days to object to any disclosure by FEMA.

(4) FEMA will make good faith efforts to appropriately recognize unmarked Documents containing Competitively Sensitive Information as Competitively Sensitive Information. However, FEMA cannot guarantee that all unmarked Documents will be recognized as being Competitively Sensitive Information and protected from disclosure to third parties. If the unmarked Documents have not been disclosed without restriction outside of FEMA, the Sub-Committee Participant may retroactively request to have appropriate designations placed on the Documents. If the unmarked Documents have been disclosed without restriction outside of FEMA, FEMA will, to the extent practicable, remove any requested information from public forums controlled by FEMA and will work promptly to request that a receiving party return or destroy disclosed unmarked Documents if requested by the Sub-Committee Participant.

(5) Competitively Sensitive Information may be used by FEMA, alone or in combination with additional information, including Documents and Competitively Sensitive Information received from third parties, to support FEMA's implementation of this Plan as determined by the Chairperson. In all situations, FEMA will aggregate and anonymize Competitively Sensitive Information to the greatest extent possible to protect the interests retained by the owners of the data while still allowing the objectives of the Plan and Sub-Committee to be achieved. To the greatest extent possible, such aggregation will render the competitively sensitive nature of the Competitively Sensitive Information of the Sub-Committee Participant no longer recognizable in a commercially sensitive manner, and without sufficient information to enable, by inference or otherwise, attribution to Sub-Committee Participant or its affiliates (as clearly identified and disclosed to FEMA). Any disclosure of Competitively Sensitive Information by FEMA, within or outside a Sub-Committee, will be subject to review and approval by DOJ and FTC.

(6) Except as otherwise expressly permitted by applicable federal law, FEMA shall not disclose any Competitively Sensitive Information or use any Competitively Sensitive Information for any purpose other than in connection with the purposes of this Plan, and FEMA will not sell any Competitively Sensitive Information of any Sub-Committee Participant.

(7) Except as described below, FEMA may disclose Competitively Sensitive Information only to its employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors). Any individual with access to Competitively Sensitive Information will be expected to comply with the terms of this Plan.

a. *Information Sharing within the Sub-Committee:* FEMA may share Competitively Sensitive Information with Sub-Committee Participants and Federal Representatives of the Plan, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) where there is a need to know and where disclosure is reasonably necessary in furtherance of implementing the Plan. FEMA will aggregate and anonymize data prior to sharing with the Sub-Committee Participants to the greatest extent possible while still allowing the objectives of the Plan to be achieved, and will not share data—particularly to competitors of the submitter—prior to consultation with and approval by the DOJ and FTC.

i. Sub-Committee Participants, when providing Competitively Sensitive Information to FEMA, may request that this Information not be shared with other Sub-Committee Participants. Where these requests are made in good faith and are reasonable in nature, FEMA will respect these requests to the greatest extent possible and will consult the owner of the data prior to any release made to Sub-Committee Participants.

b. *Restricted Reports.* FEMA may communicate Competitively Sensitive Information to appropriate government officials through Restricted Reports. The information contained in Restricted Reports shall be aggregated and anonymized to the greatest extent possible, while recognizing that these officials may need a certain amount of granularity and specificity of information to appropriately respond to COVID-19. FEMA will aim to aggregate data to the County level, and will not share Restricted Reports prior to consultation and approval from the DOJ

and FTC. FEMA may disclose Restricted Reports to relevant White House and Administration officials and State Governors, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) who have a need to know and to whom such disclosure is reasonably necessary solely in furtherance of the implementation of this Plan. FEMA shall take appropriate action (by instructions, agreement, or otherwise) to ensure that receiving parties comply with all data-sharing confidentiality and obligations under this Plan as if such persons or entities had been parties to this Plan.

c. *Public Reports.* FEMA may share information with the public through Public Reports. Data contained in Public Reports shall be fully aggregated and anonymized. Public Reports shall be aggregated to at least a state level and may be publicly disclosed after consultation and approval from the DOJ and FTC.

(8) Where possible and not obviated by Exigent Circumstances, FEMA will notify Sub-Committee Participants prior to the release of any Competitively Sensitive Information that has not been fully aggregated and anonymized. In consultation with DOJ and FTC, FEMA will consider any good-faith requests made by Sub-Committee members to hold the release of data or requests for further aggregation or anonymization. In general, FEMA will not provide notification prior to the release of *Public Reports*, under the presumption that the data in these reports has already been fully anonymized and de-identified.

(9) Any party receiving Competitively Sensitive Information through this Plan shall use such information solely for the purposes outlined in the Plan and take steps, such as imposing previously approved firewalls or tracking usage, to prevent misuse of the information. Disclosure and use of Competitively Sensitive Information will be limited to the greatest extent possible, and any party receiving Competitively Sensitive Information shall follow the procedures outlined in paragraph 7 above.

(10) At the conclusion of a Participant's involvement in a Plan—due to the deactivation of the Plan or due to the Participant's withdrawal or removal—each Participant will be requested to sequester any and all Competitively Sensitive Information received through participation in the Plan. This sequestration shall include the deletion of all Competitively Sensitive Information unless required to be kept pursuant to the Record Keeping

requirements as described *supra*, Section I, 44 CFR part 332, or any other provision of law.

I. Oversight

Each Sub-Committee Chairperson is responsible for ensuring that the Attorney General, or suitable delegate(s) from the DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under this Plan, including activation, deactivation, and scheduling of meetings. The Attorney General, the FTC Chair, or their delegates may attend Sub-Committee meetings and request to be apprised of any activities taken in accordance with activities under this Plan. DOJ or FTC Representatives may request and review any proposed action by the Sub-Committee or Sub-Committee Participants undertaken pursuant to this Plan, including the provision of data. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she shall provide warning and guidance to the Sub-Committee as soon as the potential issue is identified. If questions arise about the antitrust protections applicable to any particular action, FEMA may request DOJ, in consultation with the FTC, provide an opinion on the legality of the action under relevant DPA antitrust protections.

XXX. Establishment of the Sub-Committees

This Plan establishes Sub-Committees to implement the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID-19 to provide the Federal Government and the Participants a forum to maximize the manufacture and efficient distribution of selected types of Medical Gases and to create a prioritization protocol based upon identified types of Medical Gas End-Users and their demonstrated or projected requirements, and demonstrated or projected geographic and regional areas of need. The outcome should include a framework to expeditiously meet any Medical Gas needs in Exigent Circumstances anywhere in the Nation, and to ensure that actions to support Medical Gas stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential Medical Gas recipients. A Sub-Committee Chairperson designated by the Chairperson will convene and preside over each Sub-Committee. Sub-Committees will not be used for contract

negotiations or contract discussions between the Participants and the Federal Government; such negotiations or discussions will be in accordance with applicable federal contracting policies and procedures. However, this shall not limit any discussion within a Sub-Committee about the operational utilization of existing and potential contracts between the Participants and Representatives when seeking to align their use with overall manufacturing and distribution efforts consistent with this Plan.

Each Sub-Committee will consist of designated Representatives from FEMA, HHS, other federal agencies with equities in this Plan, and each Sub-Committee Participant. The Attorney General and Chair of the FTC, or their delegates, may also join each Sub-Committee and attend meetings at their discretion. Attendees may also be invited at the discretion of a Sub-Committee Chairperson as subject matter experts, to provide technical advice, or to represent other government agencies, but will not be considered part of the Sub-Committee.

To the extent necessary to respond to the Pandemic, only at the explicit direction of a Sub-Committee Chairperson, and subject to the provisions of Section V(B), Sub-Committee Members may be asked to provide technical advice, share information, help identify and validate places and resources of the greatest need, help project future manufacturing and distribution demands, assist in identifying and resolving the allocation of scarce resources amongst all necessary public and private sector domestic needs under Exigent Circumstances, and take any other necessary actions to maximize the timely manufacture and distribution of Medical Gases as determined necessary by FEMA to respond to the Pandemic. A Sub-Committee Chairperson or his or her designee, at the Sub-Committee Chairperson's sole discretion, will make decisions on these issues in order to ensure the maximum efficiency and effectiveness in the use of Sub-Committee Member's resources. All Sub-Committee Participants will be invited to open Sub-Committee meetings. For selected Sub-Committee meetings, attendance may be limited to designated Sub-Committee Participants to meet specific operational requirements, as determined by FEMA.

Each Sub-Committee Chairperson shall notify the Attorney General, the Chair of the FTC, Representatives, and Participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be

held to carry out this Plan. Additionally, each Sub-Committee Chairperson shall provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. A Sub-Committee Chairman may restrict attendance at meetings only on the grounds outlined by 44 CFR 332.5(c)(1)–(3). If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed pursuant to 44 CFR 332.3(c)(2).

The Sub-Committee Chairperson shall establish the agenda for each meeting, be responsible for adherence to the agenda, and provide for a written summary or other record of each meeting and provide copies of transcripts or other records to FEMA, the Attorney General, the Chair of the FTC, and all Sub-Committee Participants. The Chairperson shall take necessary actions to protect from public disclosure any data discussed with or obtained from Sub-Committee Participants which a Sub-Committee Participant has identified as a trade secret or as privileged and confidential in accordance with DPA sections 708(h)(3) and 705(d), or which qualifies for withholding under 44 CFR 332.5.

XXXI. Application and Agreement

The Sub-Committee Participant identified below hereby agrees to join in the Federal Emergency Management Agency sponsored Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID-19 under the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and to become a Participant in one or more Sub-Committees established by this Plan. This Plan will be published in the **Federal Register**. This Plan is authorized under section 708 of the Defense Production Act of 1950, as amended. Regulations governing the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and all subsequent Plans of Action at 44 CFR part 332. The applicant, as a Sub-Committee Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations at 44 CFR part 332, and the terms of this Plan.

XXXII. Assignment

No Sub-Committee Participant may assign or transfer this Plan, in whole or in part, or any protections, rights or obligations hereunder without the prior written consent of the Sub-Committee Chairperson. When requested, the Sub-Committee Chairperson will respond to written requests for consent within 10 (ten) business days of receipt.

(Company name)

(Name of authorized representative)

(Signature of authorized representative)

(Date)

Administrator (Sponsor)

(Date)

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-11278 Filed 5-27-21; 8:45 am]

BILLING CODE 9111-19-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R2-ES-2020-0119; FXES1113020000-212-FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Draft Revised Recovery Plan for Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of our draft revised recovery plan for the Houston toad, listed as endangered under the Endangered Species Act. The Houston toad is a semi-aquatic species endemic to pine and oak forests within Austin, Bastrop, Burleson, Colorado, Lavaca, Lee, Leon, Milam, and Robinson Counties, Texas. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We must receive written comments on or before July 27, 2021.

ADDRESSES:

Reviewing documents: You may obtain a copy of the draft revised recovery plan in Docket No. FWS-R2-ES-2020-0119 at <http://www.regulations.gov>.

Submitting Comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R2-ES-2020-0119.

- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R2-ES-2020-0119; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

For additional information about submitting comments, see Request for Public Comments and Public Availability of Comments under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, by phone at 512-490-0057, by email at adam_zerrenner@fws.gov, or via the Federal Relay Service at 800-877-8339 for TTY service.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft revised recovery plan for the Houston toad (*Anaxyrus houstonensis*; formerly *Bufo houstonensis*), listed as endangered under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Houston toads are endemic to aquatic and terrestrial habitats within pine and oak forests in Austin, Bastrop, Burleson, Colorado, Lavaca, Lee, Leon, Milam, and Robinson Counties, Texas. The draft revised recovery plan includes site-specific management actions and objective, measurable criteria that, when met, will enable us to remove the Houston toad from the list of endangered and threatened wildlife. We request review and comment on this plan from local, State, and Federal agencies; Tribes; and the public. We will also accept any new information on the status of the Houston toad throughout its range to assist in finalizing the recovery plan.

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the ESA. Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. The ESA requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The Service approved the original recovery plan for the Houston toad on September 17, 1984 (Service 1984). This draft recovery plan represents the first

revision of the 1984 plan and considers updated information on Houston toad biology, population status, and threats. The revised recovery plan focuses primarily on a strategy for recovery of the Houston toad, objective, measurable recovery criteria, a list of prioritized recovery actions, and the estimated time and cost to recovery.

Summary of Species Information

Historically, the Houston toad was documented to occur in the following 12 Texas counties: Austin, Bastrop, Burleson, Colorado, Fort Bend, Harris, Lavaca, Lee, Leon, Liberty, Milam, and Robertson. In recent decades, the Houston toad has experienced rapid habitat loss and population declines due to urbanization and drought, and the species' distribution has become widely scattered, with small and disconnected occurrences documented throughout portions of Austin, Bastrop, Burleson, Colorado, Lavaca, Lee, Leon, Milam, and Robertson Counties. On October 13, 1970, we listed the Houston toad (then under the scientific name *Bufo houstonensis*) as an endangered species under the Federal Endangered Species Preservation Act of 1966 (35 FR 16047), and the Houston toad's endangered status was continued under the ESA of 1973. On January 31, 1978, the Service designated critical habitat for the Houston toad in portions of Bastrop and Burleson Counties, Texas (43 FR 4022). We currently recognize this species as *Anaxyrus houstonensis* based on the most recent taxonomic evaluation.

The Houston toad is a small to medium-sized (5 to 8 centimeters [2 to 3 inches] in length) amphibian covered with raised patches of skin that resemble warts. The Houston toad is generally brown and speckled, with a pale underside that has small, dark spots. The toad's legs are banded, and two dark bands extend from each eye down to the mouth. A white stripe that can vary in pigmentation density extends down the middle of the back, but it can also be absent in some individuals. Houston toads are ectotherms (dependent on external sources of body heat), and their skin is highly vulnerable to desiccation. They become dormant during harsh weather conditions, such as winter cold (hibernation) and summer heat and drought (estivation). The Houston toad is an explosive breeder, aggregating in large numbers at breeding ponds over a period of a few nights throughout the breeding season in late January through June. Females produce large numbers (hundreds or thousands) of eggs, which hatch into tadpoles and then metamorphose into juvenile toadlets

approximately 60 to 65 days after egg deposition.

Habitat for the Houston toad is generally defined as rolling uplands covered with pine and/or oak forests underlain by deep sandy soils. Houston toads spend most of their lives in terrestrial habitats feeding, sheltering, and dispersing. Important components of terrestrial Houston toad habitat include forested patches with abundant canopy cover and herbaceous vegetation on the forest floor. Because the toad is semi-aquatic, water is also an essential component of the Houston toad's habitat, and they are known to breed in small pools of water or ephemeral ponds. Houston toad populations exhibit a metapopulation structure (an assemblage of local subpopulations that are interconnected through gene flow, local extirpations, and recolonizations), and networks of ponds and individuals dispersing among these ponds are essential to maintaining Houston toad viability.

Habitat loss in the form of destruction, modification, and fragmentation (Factor A) has long been considered the most significant and immediate threat facing the Houston toad. Within the Houston toad's range, such habitat loss has been the result of the conversion to housing, agricultural pastures, or other unsuitable landscapes. Fire suppression, wildfire, and livestock grazing have altered and degraded Houston toad habitat so that its ecosystem function has been adversely affected. Habitat fragmentation has also diminished habitat sizes and connectivity, resulting in a reduction in or elimination of the genetic exchange of individuals, edge effects, barriers to movement, and isolation, with subsequent changes in demographic parameters such as decreased survivorship and loss of genetic diversity. To a lesser extent, predation (Factor C), small population size (Factor E), and the effects of climate change (Factor E) are also significant threats to Houston toad viability. Known predators of the Houston toad include water snakes (*Nerodia* sp.), bullfrogs (*Rana catesbeiana*), raccoons (*Procyon lotor*), and other carnivores; however, red imported fire ants (*Solenopsis invicta*) are believed to be the most detrimental to Houston toad viability, because they are known to prey on newly metamorphosed toadlets and compete with juvenile and adult Houston toads for their invertebrate food base. Stochastic events from either environmental factors or demographic factors are also heightened threats to the Houston toad because of its limited range and small population sizes. Small

populations that are largely isolated from one another provide little, if any, opportunity for natural recolonization in the event of a local extirpation event. Historically, the species persisted in the face of extremely intense drought such as occurred in the 1950s; however, resilience to drought has likely decreased as a consequence of small and isolated populations. Within Texas, change models project up to 20 percent less precipitation, and most regions in Texas are predicted to become drier as temperatures increase.

Recovery Plan Goals

The objective of a recovery plan is to provide a framework for the recovery of a species so that protection under the ESA is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to reclassify the species to threatened status or remove it from the lists of endangered and threatened wildlife and plants. Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation, and by estimating time and costs for implementing needed recovery measures.

Our recovery strategy for the Houston toad is to address the threats to the species and reduce them to a point such that the viability of the Houston toad can be maintained in the wild over time. We use the conservation principles of redundancy (*i.e.*, the ability of a species to withstand catastrophic events; spreading risk among multiple populations to minimize the potential loss of the species from catastrophic events), representation (*i.e.*, the ability of a species to adapt to changing environmental conditions over time, via the range of genetic and ecological variation found within the species), and resiliency (*i.e.*, the ability of a population to withstand environmental and demographic stochasticity and disturbance) to better inform our view of what contributes to the Houston toad's viability and how best to conserve the species. The primary objectives of the recovery effort for the Houston toad involve acquiring, protecting, enhancing, restoring, and managing habitat within multiple recovery units, and implementing population restoration efforts such that multiple, resilient metapopulations with the appropriate genetic and ecological diversity are distributed throughout the species' range. We have identified six recovery units across the Houston toad's current range that are essential to the survival and recovery of the species. These recovery units encompass

portions of all six Texas counties where the Houston toad is extant, and represent the areas most likely to encapsulate at least one metapopulation. The revised recovery plan provides recovery criteria aimed at managing or eliminating threats to meet the goal of delisting the species. These recovery criteria are based on the conservation of undisturbed forested areas that are protected from future development, and the establishment of multiple Houston toad metapopulations composed of interconnected subpopulations. The site-specific management actions needed to address threats to Houston toad viability and achieve the recovery criteria involve: (1) Conserving, restoring, and protecting habitat; (2) captive propagation and supplementation; (3) establishing a monitoring program; (4) conducting research; (5) expanding monitoring into new areas; (6) conducting public education and outreach; (7) identifying effective habitat management strategies; and (8) effectively planning and coordinating recovery implementation.

Request for Public Comments

Section 4(f) of the ESA requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (July 1, 1994; 59 FR 34270). In an appendix to the approved recovery plan, we will summarize and respond to the issues raised by the public and peer reviewers. Substantive comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementing recovery actions. Responses to individual commenters will not be provided, but we will provide a summary of how we addressed substantive comments in an appendix to the approved recovery plan.

We invite written comments on the draft recovery plan. In particular, we are interested in additional information regarding the current threats to the species and the implementation of the recommended recovery actions.

Public Availability of Comments

All comments received, including names and addresses, will become part of the administrative record and will be available to the public. 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. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

We developed our draft recovery plan and publish this notice under the authority of section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2021–11382 Filed 5–27–21; 8:45 am]

BILLING CODE 4333–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ260000.L10600000.PC0000.
LXSIADVSB000.21X]

Virtual Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wild Horse and Burro Advisory Board (Advisory Board) will hold a virtual public meeting.

DATES: The Advisory Board will hold a virtual public meeting on Wednesday and Thursday, June 30 through July 1, 2021, from 8:00 a.m. to 5:00 p.m. Mountain Time (MT).

ADDRESSES: The virtual meeting will be held via the Zoom Webinar Platform.

Written comments pertaining to the meeting and written statements that will be presented to the Advisory Board may be filed in advance of the meeting through the Advisory Board email address at www.whbadvisoryboard@blm.gov. Please include "Advisory Board Comment" in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Wild Horse and Burro Program Coordinator; telephone: (602) 906–5543, email: dboothe@blm.gov. Individuals that use a telecommunications device for the deaf (TDD) may call the Federal Relay

Service (FRS) at (800) 877–8339 to contact Ms. Boothe during normal business hours. The FRS is available 24 hours a day, 7 days a week. All responses will be during normal business hours.

SUPPLEMENTARY INFORMATION: The Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the U.S. Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the nation's public lands. The Advisory Board operates under the authority of 43 CFR 1784.

Advisory Board Public Meeting Agenda

Wednesday, June 30, 2021

Session 1—8:00 a.m. to 9:30 a.m.
Mountain Time (MT)

- Welcome Remarks and Housekeeping
 - Approval of September 2020 Meeting Minutes
 - BLM and USFS Responses to Board Recommendations from September 2020 Board Meeting
- Break—9:30 a.m. to 9:45 a.m. MT

Session 2—9:45 a.m. to 12:00 p.m. MT

- U.S. Forest Service Program Overview
 - BLM Wild Horse and Burro Program Overview
 - BLM Comprehensive Animal Welfare Program Update
 - BLM Outyear Gather Planning Update
 - BLM Research Projects Update
 - BLM Population Surveys Update
- Advisory Board Discussion
- Break—12:00 p.m. to 12:45 p.m. MT

Session 3—12:45 p.m. to 2:45 p.m. MT

- Public Comment Period (1)
- Break—2:45 p.m. to 3:00 p.m. MT

Session 4—3:00 p.m. to 5:00 p.m. MT

- Comprehensive Ecosystem Approach to Management Work Group Discussion
- Adjournment

Thursday, July 1, 2021

Session 5—8:00 a.m. to 10:00 a.m. MT

- Humane Handling Work Group Discussion
- Break—10:00 a.m. to 10:30 a.m. MT

Session 6—10:30 a.m. to 11:30 a.m. MT

- Public Comment Period (2)

Session 7—11:30 a.m. to 1:00 p.m. MT

- BLM Internal Organizational Structure Work Group Discussion
- Advisory Board Discussion and Draft Recommendations

Break—1:00 p.m. to 1:30 p.m. MT

Session 8—1:30 p.m. to 2:30 p.m. MT

- Public Comment Period (3)

Session 9—2:30 p.m. to 5:00 p.m. MT

- *Advisory Board Discussion and Finalize Recommendations (Board Vote)*

Adjournment

Advisory Board meetings are open to the public in their entirety and will be live streamed at www.blm.gov/live and through the Zoom Webinar Platform.

The BLM will post the final agenda 2 weeks prior to the meeting online at www.blm.gov/programs/wild-horse-and-burro/get-involved/advisory-board. The public will have an opportunity to provide verbal comments to the Board during the designated times.

Beyond live captioning, any person(s) with special needs, such as an auxiliary aid, interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. Boothe two weeks before the scheduled meeting date. It is important to adhere to the two-week notice to allow enough time to arrange for the auxiliary aid or special service. Live captioning will be available throughout the event on both the Zoom Webinar Platform and the livestream page at www.blm.gov/live.

Public Comment Procedures

The BLM welcomes comments from all interested parties. Members of the public will have three opportunities to make statements (audio only) to the Board regarding the Wild Horse and Burro Program on both Wednesday, June 30, from 12:45 p.m. to 2:45 p.m. MT; and on Thursday, July 1, from 10:30 a.m. to 11:30 a.m. MT, and from 1:30 p.m. to 2:30 p.m. MT. To accommodate all individuals interested in providing comments, please register with BLM three days in advance of the meeting. Individuals that have not registered in advance but would like to offer comments will be permitted if time allows. Information on how to register, login, and participate in the virtual meeting will be announced at least 15 days in advance of the meeting on the BLM website at www.blm.gov. Participants using desktops, laptops, smartphones, and other personal digital devices will be able to participate via audio only. Those with phone only access will also be able to participate via a provided phone number and meeting ID. The Advisory Board may limit the length of comments, depending on the number of participants who register in advance. Written comments emailed three days prior to the meeting will be provided to the Advisory Board for consideration during the meeting. Please see the **ADDRESSES** section for the BLM email address and include "Advisory Board Comment" in the

subject line of your email. The BLM will record the entire meeting, including the allotted comment time. Comments should be specific and explain the reason for the recommendation(s). Comments supported by quantitative information or studies, or those that include citations and analysis of applicable laws and regulations, are most beneficial and more useful, and likely to assist the decision-making process for the management and protection of wild horses and burros.

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, the BLM cannot guarantee that it will be able to do so.

(Authority: 43 CFR 1784.4–2)

David B. Jenkins,

Assistant Director, Resources and Planning.

[FR Doc. 2021–11370 Filed 5–27–21; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS01520; OMB Control Number 1029–0057]

Reclamation on Private Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0057 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Public Law 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Title of Collection: Reclamation on Private Lands.

OMB Control Number: 1029–0057.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Responses: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 120 hours.

Total Estimated Number of Annual Burden Hours: 120.

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

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021-11305 Filed 5-27-21; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
211S180110; S2D2S SS08011000
SX064A000 21XS501520; OMB Control
Number 1029-0098]

Petition Process for Designation of Federal Lands as Unsuitable for All or Certain Types of Surface Coal Mining Operations and for Termination of Previous Designations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556-MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please

reference OMB Control Number 1029-0098 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202-208-2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision-making process to approve or disapprove a request.

Title of Collection: Petition process for designation of Federal lands as

unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OMB Control Number: 1029-0098.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 1,000 hours.

Total Estimated Number of Annual Burden Hours: 1,000.

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

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021-11306 Filed 5-27-21; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
212S180110; S2D2S SS08011000
SX064A000 21XS501520]

Grant Notification for Fiscal Year 2021

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) Title IV Abandoned Mine Land (AML) Reclamation Program and Title V Regulatory Program. We will award these grants during fiscal year 2021.

DATES: Single points of contact or other interested State, Tribal, or local entities may submit written comments regarding AML Reclamation Program and Regulatory Program funding until June 28, 2021.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic mail:* Send your comments to yrichardson@osmre.gov.
- *Mail, hand-delivery, or courier:*

Send your comments to Office of Surface Mining Reclamation and Enforcement, Attn: Grants Notice, Room 4551, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Yetunde Richardson, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, MS 4551, Washington, DC 20240; Telephone (202) 208-2766.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under SMCRA's Title IV AML Reclamation Program and Title V Regulatory Program. We will award these grants during fiscal year 2021. Eligible applicants are those States and Tribes with an existing AML reclamation program and/or a regulatory program approved pursuant to SMCRA, as amended, 30 U.S.C. 1201 *et seq.*, and, as provided in 30 U.S.C. 1295, those States and Tribes that are seeking to develop a regulatory program. Consistent with Executive Order 12372, we are providing State and Tribal officials the opportunity to review and comment on these proposed Federal financial assistance activities. Of the eligible applicants, nineteen States or Tribes do not have single points of contact; therefore, we are publishing this notice as an alternate means of notification.

Description of the AML Reclamation Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees that, along with funds from other sources, are used to finance reclamation of AML coal mine sites and certain other purposes. Title IV of SMCRA authorizes OSMRE to provide grants, funded from permanent (mandatory) appropriations, to eligible States and Tribes. Recipients use these funds: To reclaim the highest priority AML coal mine sites that were abandoned prior to the enactment of SMCRA in 1977; to reclaim eligible non-coal sites; for projects that address the impacts of mineral development; and for non-reclamation projects.

Description of the Regulatory Program

Title V of SMCRA authorizes OSMRE to provide grants to States and Tribes to develop, administer, and enforce State

and Tribal regulatory programs that address, among other things, the disturbances from coal mining operations. Additionally, upon our approval of a State or Tribal regulatory program, Title V authorizes that State or Tribe to assume regulatory primacy and act as the regulatory authority within the State or Tribe, and to administer and enforce its approved regulatory program. These provisions of SMCRA are implemented by our regulations at Title 30 of the Code of Federal Regulations, Chapter VII.

Glenda H. Owens,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2021-11302 Filed 5-27-21; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029-0094]

Notice of Information Collection; Request for Comment

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556-MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029-0094 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202-208-2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to

comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Title of Collection: 30 CFR part 700—General.

OMB Control Number: 1029-0094.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments and individuals.

Total Estimated Number of Annual Respondents: 5.

Total Estimated Number of Annual Responses: 5.

Estimated Completion Time per Response: Varies 1 hour to 50 hours, depending activity.

Total Estimated Number of Annual Burden Hours: 63.

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

Frequency of Collection: One time.
Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
 Division of Regulatory Support.*

[FR Doc. 2021-11308 Filed 5-27-21; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
 211S180110; S2D2S SS08011000
 SX064A000 21XS501520; OMB Control
 Number 1029-0080]

Permanent Regulatory Program Requirements—Standards for Certification of Blasters

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556-MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029-0080 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202-208-2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of

information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information is used to identify and evaluate new blaster certification programs. Part 850 implements Section 719 of the Surface Mining Control and Reclamation Act (SMCRA). Section 719 requires the Secretary of the Interior to issue regulations which provide for each State regulatory authority to train, examine and certify persons for engaging in blasting or use of explosives in surface coal mining operations. Each State that wishes to certify blasters must submit a blasters certification program to OSMRE for approval.

Title of Collection: Reclamation on Private Lands.

OMB Control Number: 1029-0080.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 320.

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

Frequency of Collection: One time.

Total Estimated Annual Nonhour

Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
 Division of Regulatory Support.*

[FR Doc. 2021-11307 Filed 5-27-21; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1194]

Certain High-Density Fiber Optic Equipment and Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

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 a final initial determination ("ID") issued by the presiding administrative law judge ("ALJ"), finding a violation of section 337 of the Tariff Act of 1930. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT:

Cathy Chen, 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: The Commission instituted this investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC ("Corning") of Charlotte, North Carolina. 85 FR 16653 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 ("the '320 patent"); 10,120,153 ("the '153 patent"); 8,712,206 ("the '206 patent"); 10,094,996 ("the '996 patent"); and 10,444,456 ("the '456 patent"). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named the following as respondents: Total Cable Solutions, Inc. ("TCS") of Springboro, Ohio; Legrand North America, LLC ("Legrand") of West Hartford, Connecticut; AFL Telecommunications Holdings LLC ("AFL Holdings") of Duncan, South Carolina; Huber+Suhner AG of Herisau, Switzerland; Huber + Suhner, Inc. of Charlotte, North Carolina; Shenzhen Ankom Telecom Co., Ltd. d/b/a Ankom Telecom ("Ankom") of Shenzhen, China; Shanghai TARLUZ Telecom Tech. Co., Ltd. d/b/a TARLUZ ("TARLUZ") of Shanghai, China; Wulei Technology Co., Ltd. d/b/a Bonelinks ("Wulei Bonelinks") of Shenzhen, China; FS.com Inc. ("FS") of New Castle, Delaware; Leviton Manufacturing Co., Inc. ("Leviton") of Melville, New York; Panduit Corporation ("Panduit") of Tinley, Illinois; The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks ("Wirewerks") of Quebec, Canada; and The Siemon Company ("Siemon") of Watertown, Connecticut. *Id.* The notice of investigation also names the Office of Unfair Import Investigations ("OUII") as a party. *Id.* at 16654.

Respondent Legrand was terminated from the investigation based on withdrawal of allegations in the complaint pursuant to Commission Rule 210.21(a), 19 CFR 210.21(a). *See* Order No. 5 (Apr. 16, 2020); *unreviewed by*

Comm'n Notice (May 7, 2020). The complaint and notice of investigation were amended to substitute AFL Telecommunications LLC for respondent AFL Holdings. 85 FR 44923 (July 24, 2020). Thereafter, Respondent AFL Telecommunications LLC was terminated from the investigation based on a settlement agreement. *See* Order No. 27 (Oct. 20, 2020), *unreviewed by* Comm'n Notice (Nov. 2, 2020). Respondents Huber + Suhner AG, Huber + Suhner, Inc., Ankom, TARLUZ, and Wulei Bonelinks (collectively, "Defaulting Respondents") were found in default pursuant to Commission Rule 210.16, 19 CFR 210.16. *See* Order Nos. 7 & 8 (June 9, 2020), *unreviewed by* Comm'n Notice (June 22, 2020); Order No. 13 (Aug. 21, 2020), *unreviewed by* Comm'n Notice (Sep. 15, 2020). Respondent TCS was terminated from the investigation based on consent. *See* Comm'n Notice (Sept. 28, 2020). Accordingly, Respondents Panduit, Leviton, Siemon, FS, and Wirewerks (collectively, "Active Respondents") remain active in the investigation.

As a result of termination of all asserted claims of the '996 patent and certain other asserted claims, *see* Order No. 11 (July 29, 2020), *unreviewed by* Comm'n Notice (Aug. 13, 2020); Order No. 18 (Sept. 14, 2020), *unreviewed by* Comm'n Notice (Oct. 14, 2020); and Order No. 19 (Oct. 2, 2020), *unreviewed by* Comm'n Notice (Oct. 27, 2020), claims 1 and 3 of the '320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent remain asserted in the investigation.

A prehearing conference and evidentiary hearing were held in this investigation from October 21-26, 2020.

On March 23, 2021, the ALJ issued his final ID, finding a violation of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent. The ID also found the Active Respondents have not shown that any of the asserted patent claims are invalid. The ID further found that the economic prong of the domestic industry requirement has been satisfied with respect to all the asserted patents under section 337(a)(3)(B) and (C).

On April 5, 2021, OUII and Respondent Leviton each filed a petition for review of the ID. That same day, Respondents FS, Panduit, Wirewerks, and Siemon (collectively, "Joint Respondents") also filed a joint petition for review. On April 13, 2021, OUII, Leviton, the Joint Respondents, and

Complainant Corning each filed a response to the petitions.

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review: (1) The ID's finding that the importation requirement of section 337 is met with respect to the accused products of Respondents Leviton, Panduit, and Siemon; (2) the ID's interpretation of the "width of the front side of [the] fiber optic module" limitation in the asserted claims of the '456 patent, and the associated infringement findings; (3) the ID's construction of "a front opening" in the asserted claims of the '206 patent, and the associated infringement findings; (4) the ID's finding that Leviton directly infringes the asserted claims of the '320 and '456 patents; (5) the ID's findings on indirect infringement of the asserted claims of the '320, '456, and/or '153 patents by the accused products of Respondents Leviton, Panduit, FS, and Siemon; and (6) the ID's finding that Corning has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B) and (C). The Commission has determined not to review any other findings presented in the final ID.

In connection with its review, Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. To determine whether an imported article, which does not satisfy all elements of an asserted patent claim, is an "article that infringes" within the meaning of section 337 when the respondent-importer uses the imported article to directly infringe the asserted patent claim after importation:

a. Would it be appropriate for the Commission to consider whether there is a sufficient nexus between the imported article and the alleged unfair acts?

b. Would it be appropriate for the Commission to consider the following factors: (i) Whether the imported article is a material part of the claimed invention, (ii) whether it is especially designed and/or configured for use in an infringing manner, (iii) whether it has substantial noninfringing uses, and (iv) the extent to which it is modified or combined with other articles after importation?

Please consider the applicable Court and Commission precedent, including *Suprema, Inc. v. International Trade*

Comm'n, 796 F.3d 1338 (Fed. Cir. 2015), and please apply your analysis to the facts of this investigation with respect to Leviton's alleged direct infringement of the asserted claims of the '320 and '456 patents.

2. With regard to Leviton, please address with citation to the record whether any of the U.S.-sourced parts and assembly steps in the United States for Leviton's enclosures relate to the claims asserted against Leviton.

3. Please provide citation to any record evidence of sales of the accused products by Leviton, Panduit, Siemon, or FS. In addition, please discuss the relevance, if any, of such sales in determining whether there is direct infringement of the '320, '456, and/or '153 patents by third-parties.

4. With citation to the record evidence please discuss whether there are any non-infringing uses of the accused products that provide at least 98 fiber optic connections per 1U space as required by claim 1 of the '320 patent or at least 144 fiber optic connections per 1U space required by claim 3 of the '320 patent. In addition, please discuss the relevance, if any, of such noninfringing uses in assessing the knowledge requirement for inducement by Leviton, Panduit, Siemon, and FS and in determining whether there is direct infringement of the '320, '456, and/or '153 patents by third-parties.

5. Does the record evidence show that Leviton, Panduit, Siemon, and FS copied Corning's EDGE products, including designing and developing their accused products to support the same high fiber density as Corning's EDGE products and with the goal of capturing EDGE's customers and the same segment of the market?

6. Please address whether the domestic industry investments constitute investments in the "exploitation" of the asserted patents under Section 337(a)(3)(C). See *Certain Integrated Circuit Chips and Products Containing the Same*, Inv. No. 337-TA-859, Comm'n Op., 2014 WL 12796437 (Aug. 22, 2014).

7. The Federal Circuit has stated that section 337 does not protect mere importers. See, e.g., *Schaper Mfg. Co. v. Int'l Trade Comm'n*, 717 F.2d 1368, 1372-73 (Fed. Cir. 1983). Please explain whether Complainant's asserted domestic industry differs from that of a mere importer, including by discussing: (A) How the Commission and the Federal Circuit have considered such investments in prior investigations, and (B) how the facts of this investigation should be assessed in light of applicable precedent. Also address the extent to which the activities relied upon to show

satisfaction of the economic prong (e.g., field engineering and Pioneer-related expenses) need to take place in the United States either as a legal or a practical matter, such that those activities would not distinguish a domestic industry from a mere importer.

8. Please address whether and to what extent *Schaper Mfg. Co. v. Int'l Trade Comm'n*, 717 F.2d 1368, 1372-73 (Fed. Cir. 1983), should continue to guide the Commission's analysis in light of changes to the law and Commission and Federal Circuit precedents since 1983 and the legislative history associated with the 1988 amendments to section 337 discussing the "inconsistent and unduly narrow" view of domestic industry reflected in certain pre-1988 Commission decisions and specifically citing as an example the Commission's decision in *Certain Miniature, Battery-Operated, All Terrain, Wheeled Vehicles*, Inv. No. 337-TA-122. See, e.g., *Certain Solid State Storage Drives, Stacked Electronics Components, and Products Containing the Same*, Inv. No. 337-TA-1097, Commission Op. at 9, n.6 (June 29, 2018).

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on: (1) The public health and welfare, (2)

competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The parties' opening submissions should not exceed 80 pages, and their reply submissions should not exceed 50 pages. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on Monday, June 7, 2021. Reply submissions must be filed no later than the close of business on Monday, June 14, 2021. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines

stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1194) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

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. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on May 24, 2021.

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: May 24, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11299 Filed 5-27-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1537 (Final)]

Chassis and Subassemblies From China; Supplemental Schedule for the Final Phase of an Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: May 17, 2021.

FOR FURTHER INFORMATION CONTACT:

Ahdia Bavari ((202) 205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective December 28, 2020, the Commission established a general schedule for the conduct of the final phase of its investigations on chassis and subassemblies ("chassis") from China,¹ following a preliminary determination by the U.S. Department of Commerce ("Commerce") that imports of chassis from China were being subsidized by the government of China.² Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 14, 2021, 2019 (86 FR 3193). The hearing was held on March 16, 2021, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission subsequently issued its final determination that an industry in the United States was materially injured by reason of imports of chassis that Commerce had determined were subsidized by the government of China. On May 11, 2021,

Commerce issued its final affirmative determination that imports of chassis from China were being sold at LTFV in the United States.³ Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigation on imports of chassis from China.

This supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce's final antidumping duty determination is June 4, 2021. Supplemental party comments may address only Commerce's final antidumping duty determination regarding imports of chassis from China. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of this investigation regarding subject imports from China will be placed in the nonpublic record on June 11, 2021; and a public version will be issued thereafter.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

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.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

¹ 86 FR 3193, January 14, 2021.

² 86 FR 56, January 4, 2021.

³ 86 FR 26694, May 17, 2021.

By order of the Commission.

Issued: May 25, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11330 Filed 5–27–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1505–1507, 1510–1511, 1513, and 1515 (Final)]

Prestressed Concrete Steel Wire Strand From Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that an industry in the United States is materially injured by reason of imports of prestressed concrete steel wire strand (“PC strand”) from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine, provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).²

Background

The Commission instituted these investigations effective April 16, 2020, following receipt of petitions filed with the Commission and Commerce by Insteel Wire Products Company, Mount Airy, North Carolina, Sumiden Wire Products Corporation, Dickson, Tennessee, and Wire Mesh Corporation, Houston, Texas with regard to imports of PC strand from 15 countries. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PC strand from Turkey were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of PC strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates were being sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C.

1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 8, 2020 (85 FR 63576). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on December 10, 2020. All persons who requested the opportunity were permitted to participate.

The investigations became staggered when Commerce: (i) Postponed the final determinations for its antidumping duty investigations regarding PC strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine; and (ii) reached earlier final antidumping and countervailing duty determinations concerning PC strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates. On January 25, 2021, the Commission issued final affirmative determinations in its antidumping and countervailing duty investigations of PC strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates (86 FR 7564, January 29, 2021).

Following notification of final determinations by Commerce that imports of PC strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)),³ notice of the supplemental scheduling of the final phase of the Commission’s

³ *Prestressed Concrete Steel Wire Strand From Indonesia: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, In Part*, 86 FR 18495, April 9, 2021; *Prestressed Concrete Steel Wire Strand From Italy: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances*, 86 FR 18505, April 9, 2021; *Prestressed Concrete Steel Wire Strand From Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 18502, April 9, 2021; *Prestressed Concrete Steel Wire Strand From South Africa: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 18497, April 9, 2021; *Prestressed Concrete Steel Wire Strand From Spain: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 86 FR 18512, April 9, 2021; *Prestressed Concrete Steel Wire Strand From Tunisia: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 18508, April 9, 2021; *Prestressed Concrete Steel Wire Strand From Ukraine: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances*, 86 FR 18498, April 9, 2021.

antidumping duty investigations with respect to Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 21, 2021 (86 FR 20711).

The Commission made these determinations pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on May 24, 2021. The views of the Commission are contained in USITC Publication 5196 (May 2021), entitled *Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine: Investigation Nos. 731–TA–1505–1507, 1510–1511, 1513, and 1515 (Final)*.

By order of the Commission.

Issued: May 25, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11332 Filed 5–27–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Capacitive Touch Sensing Systems, Capacitive Touch Sensing Controllers, Microcontrollers with Capacitive Touch Sensing Functionality, and Components Thereof, DN 3549*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant’s filing pursuant to the Commission’s Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² The Commission also finds that imports subject to Commerce’s affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Indonesia.

accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Neodron Ltd. on May 24, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain capacitive touch sensing systems, capacitive touch sensing controllers, microcontrollers with capacitive touch sensing functionality, and components thereof. The complainant names as respondents: STMicroelectronics N.V. of Switzerland; STMicroelectronics, Inc. of Switzerland; STMicroelectronics (North America) Holding, Inc. of Switzerland; Cypress Semiconductor Corp. of San Jose, CA; Renesas Electronics Corp. of Japan; Renesas Electronics America Inc. of Milpitas, CA; and Renesas Technology America, Inc. of Milpitas, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States

relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. 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. 3549") 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: May 25, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11356 Filed 5-27-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0087]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension Without Change of a Currently Approved Collection; eForm Access Request/User Registration

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

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 July 27, 2021.

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, please contact: Desiree Dickinson, EPS/IMPORTS/FESD either by mail at ATF National Services Center, 244 Needy Road, Martinsburg, WV 25405, by email at Desiree.Dickinson@atf.gov, or by telephone at 304-616-4550.

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:* eForm Access Request/User Registration.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

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.

Other (if applicable): None.

Abstract: Members of the public will use the eForm Access Request/User Registration to create a username and password for access to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) eForms platform, which is an electronic application filing system.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 76,000 respondents will complete this registration form annually, and it will take each respondent approximately 2.24 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 2,387 hours, which is equal to 76,000 (# of respondents) * .037333333 (2.24 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 25, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021-11354 Filed 5-27-21; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2021-02; Exemption Application No. D-12030]

Exemption From Certain Prohibited Transaction Restrictions Involving the Goldman Sachs Group, Inc. (Goldman Sachs or the Applicant) Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). The exemption affects the ability of certain entities with specified relationships to Goldman Sachs to continue to rely upon relief provided by Prohibited Transaction Exemption 84-14 (PTE-84-14).

DATES: This exemption will be in effect for a period of up to five (5) years, beginning on the date of the conviction of Goldman Sachs (Malaysia) Sdn. Bhd. (Goldman Sachs Malaysia), an indirect, wholly-owned subsidiary of Goldman Sachs, provided that the conditions set out below in Section I are satisfied.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 4, 2021, the Department published a notice of proposed exemption in the **Federal Register** at 86 FR 131, permitting certain entities with specified relationships to Goldman Sachs and Goldman Sachs Malaysia to continue to rely upon the relief provided by PTE 84-14¹ for a period of five years, notwithstanding the criminal conviction of Goldman Sachs Malaysia for conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (the Goldman Sachs Malaysia FCPA Conviction).

The Department is granting this exemption to ensure that Covered Plans² with assets managed by an asset

¹ 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

² "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with

manager within the corporate family of Goldman Sachs may continue to benefit from the relief provided by PTE 84–14.

The grant of this five-year exemption does not imply that the Department will grant additional relief for the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs to continue to rely on the relief in PTE 84–14 beyond the end of this exemption's five-year term. This exemption provides only the relief specified in the text of the exemption, and only with respect to the criminal convictions or criminal conduct described herein. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA and the Code.

The Department intends for the terms of this exemption to promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM. The Department makes the requisite findings under ERISA section 408(a) based on adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

respect to which a Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM relies on PTE 84–14, or with respect to which a Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM (or any Goldman Sachs affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

Accordingly, the Department grants this exemption under its sole authority.

Department's Comment

The Department cautions that the relief in this exemption will terminate immediately if an entity within the Goldman Sachs corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Goldman Sachs Malaysia Conviction) during the Exemption Period. Although the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The Department specifically designed the terms of this exemption to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction, or the expiration of this exemption without additional relief, or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. In this regard, the Applicant was given seven days to provide notice to interested persons, and all comments and requests for a hearing were initially due by February 10, 2021. However, the Applicant subsequently informed the Department that the Applicant did not provide notice to 968 interested persons within the seven day period. Accordingly, the Department extended the comment period for those persons to March 6, 2021. The Department received two written comments: One from the Applicant and one from a member of the public. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the exemption, as described below.

Comments From Goldman Sachs

I. Certification of Audit Report

Section I(i)(8) of the proposed exemption states: "The Goldman Sachs Board of Directors is provided a copy of the Audit Report; and a senior executive officer of the Audit Committee established by the Goldman Sachs Board of Directors must review the Audit Report for each Goldman Sachs QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report."

The Applicant states that the Audit Committee of Goldman Sachs' Board of

Directors is composed solely of independent directors and, accordingly, there is no Goldman Sachs "senior executive officer" who is an Audit Committee member.

The Applicant requests that the Department revise Section I(i)(8) of the proposed exemption to require that the Audit Report be reviewed by the Chairperson of the Audit Committee and one of: (a) The general counsel of the Goldman Sachs Affiliated QPAM to which the Audit Report applies; (b) one of the three most senior executive officers of the Goldman Sachs Affiliated QPAM to which the Audit Report applies; or (c) the Chief Compliance Officer of Goldman Sachs. The Applicant further requests that the Department replace the language that reads, "and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report," with "certify in writing, under penalty of perjury, that a copy of such Audit Report was provided to the Board of Directors and that the Audit Report was reviewed with the Chairperson of the Audit Committee."

Section I(i)(8) of this Exemption: The Department agrees with the Applicant's comment, and Section I(i)(8) of this exemption is now consistent with the Applicant's request, but has additional clarifying language. Section I(i)(8) of this exemption now reads, in relevant part: ". . . must certify in writing, under penalty of perjury, that a copy of such Audit Report was provided to the Board of Directors, and that the Audit Report was reviewed with and by the Chairperson of the Audit Committee . . ."

II. Timing of Notices

A. Notice of Obligations

Section I(j)(7) of the proposed exemption states: "Within four (4) months of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM on or after the effective date of this exemption, if granted, the Goldman Sachs Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the Goldman Sachs Affiliated QPAM and such clients, or other written contractual agreement. Notwithstanding the above, a Goldman Sachs Affiliated QPAM will not violate the condition solely because a Plan or

IRA refuses to sign an updated investment management agreement.”

The Applicant states that it will be operationally difficult for the Goldman Sachs Affiliated QPAMs to provide these prospective clients with physical copies of such documents beginning on the effective date, given the various system-driven account opening processes utilized among the impacted lines of business. According to the Applicant, it is probable that many such prospective clients have already received copies of current account opening agreements, which they are reviewing and will sign and return over the following several weeks or months. The Applicant requests clarification that, with respect to Covered Plans that enter into a written investment management agreement on or after the effective date of the exemption, the Goldman Sachs Affiliated QPAMs may provide the updated written investment management agreements within four months of the effective date of the exemption.

Section I(j)(7) of this Exemption: The Department agrees with the Applicant's comment, and Section I(j)(7) of this exemption is now consistent with the Applicant's request.

B. Notice to Covered Plans

Section I(k) of the proposed exemption states: “Within 60 days of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM will provide a **Federal Register** copy of the notice of the exemption, along with a separate summary describing the facts that led to the Goldman Sachs Malaysia FCPA Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Goldman Sachs Malaysia FCPA Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM, or the sponsor of an investment fund in any case where a Goldman Sachs Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All Covered Plan clients that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM after that date must receive a copy of the notice of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from

the Goldman Sachs Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the five-year exemption).”

The Applicant requests a revision clarifying that the phrase “Covered Plan clients that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM after that date” refers to Covered Plans that enter into a written asset or investment management agreement after a date that is sixty days from the effective date of the exemption.

Section I(k) of this Exemption: The Department agrees with the Applicant's comment, and Section I(k) of this exemption is now consistent with the Applicant's request.

III. Compliance Officer

Section I(m)(1) of the proposed exemption, which provides for designation of a Compliance Officer, states: “Within 60 days of the effective date of this exemption, Goldman must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. . . . With respect to the Compliance Officer, the following conditions must be met: (i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and (ii) The Compliance Officer must have a direct reporting line within [Goldman's] Audit Committee and a direct reporting line to the highest ranking corporate officer in charge of compliance for the applicable Goldman Sachs Affiliated QPAM.”

The Applicant states that this condition, as written, cannot be fulfilled within the Applicant's organization because no compliance officer has a direct reporting line within the Applicant's Audit Committee. The Applicant states that the most senior compliance officer within the organization regularly provides reports directly to the Audit Committee, but does not formally report to the Committee.

The Applicant further states that, with respect to the second clause of the condition, the most senior compliance officer within the organization (*i.e.*, the only compliance officer with a reporting relationship to the Audit Committee) would not have a reporting line to the highest-ranking compliance officer for any Goldman Sachs Affiliated QPAM, as the former is senior to the latter. In order to ensure the condition is met, the

Applicant requests that the condition require appointment of one or more Compliance Officers who are: (i) A compliance officer who regularly reports to the Audit Committee, (ii) the highest-ranking compliance officer at the Goldman Sachs Affiliated QPAM, or (iii) a compliance officer who reports to the highest ranking compliance officer at the QPAM.

In addition, the Applicant requests that the Department provide clarification by confirming that each Goldman Sachs Affiliated QPAM or relevant line of business may designate its own compliance officer.

Section I(m) of this Exemption: The Department agrees, in part, with the Applicant's comment, and Section I(m) of this exemption now allows each Goldman Sachs Affiliated QPAM to designate its own compliance officer. The designated compliance officer must be someone who regularly reports to the Goldman Sachs Audit Committee or who is the highest-ranking compliance officer at the Goldman Sachs Affiliated QPAM. However, the Applicant has not demonstrated the necessity of allowing a Compliance Officer to include a person who reports to the highest ranking compliance officer at the QPAM.

IV. Other Clarifications

A. Policies and Training

Section I(h)(1) of the proposed exemption states: “Within four months of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM must immediately develop, maintain, implement, and follow written policies and procedures (the Policies)”

Section I(h)(3) of the proposed exemption states: “Within six months of the effective date of the exemption, each Goldman Sachs Affiliated QPAM must immediately develop, maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted at least annually, for all relevant Goldman Sachs Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel”

The Applicant requests that the Department increase the development period in section I(h)(1) of the proposed exemption to six months. The Applicant states that Goldman Sachs Affiliated QPAMs manage assets for hundreds of ERISA plan mandates through separate accounts, more than 14,000 IRAs, and several collective investment trusts through various lines of business. The Applicant states that many of those businesses have different compliance

officers (along with the various levels within the businesses themselves) that must coordinate to implement and review compliance routines and surveillance measures, as well as oversee the implementation of the Policies. The Applicant states that a six-month period would align with the period for development of the Training, as set forth in Section I(h)(3) of the proposed exemption.

The Applicant requests the corresponding deletion of the term “immediately” in Section I(h)(1) of the proposed exemption (concerning the Policies) and Section I(h)(3) of the proposed exemption (concerning the Training).

Section I(h)(1) and (h)(3) of this Exemption: The Department agrees with the Applicant’s comment, and Sections I(h)(1) and I(h)(3) of this exemption are now consistent with the Applicant’s request.

B. Completion of Audit Report

Section I(i)(1) of the proposed exemption states: “The first audit must cover the twelve month period that ends on the date that is two years following the date of the Goldman Sachs Malaysia FCPA Conviction, and must be completed within sixty days thereafter. The second audit must cover the twelve month period that ends on the date that is four years following the date of the Goldman Sachs Malaysia FCPA Conviction, and must be within completed sixty days thereafter. The third audit must cover the fifth year covered by this exemption, and must be completed within sixty days thereafter.”

The Applicant requests that, consistent with the Department’s other exemptions and in order for the exemption to be workable for any independent auditor selected by the Applicant, the auditor have six months after the close of each audit period to complete the Audit Report for that period.

Section I(i)(1) of this Exemption: The Department agrees with the Applicant’s comment, and Section I(i)(1) of this exemption is now consistent with the Applicant’s request.

D. Right To Obtain Policies

Section I(r) of the proposed exemption states: “Within 60 days of the effective date of the five-year exemption, each Goldman Sachs Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes

key components of the Goldman Sachs Affiliated QPAM’s written Policies developed in connection with this exemption . . .”

The Applicant requests that this condition be modified to provide for notice of Covered Plans’ right to obtain the Policies or Summary Policies within sixty days after the date on which the Policies must be completed under the terms of the exemption, rather than sixty days after the effective date.

Section I(r) of this Exemption: The Department agrees with the Applicant’s comment, and Section I(r) of this exemption is now consistent with the Applicant’s request.

E. Definition of “Affiliated QPAMs”

Section II(d) of the proposed exemption defines the term “Goldman Sachs Affiliated QPAM” to mean: “The Goldman Sachs Trust Company, N.A.; Goldman Sachs Bank USA; Goldman Sachs & Co. LLC; Goldman Sachs Asset Management, L.P.; Goldman Sachs Asset Management International; Goldman Sachs Hedge Fund Strategies LLC; GS Investment Strategies, LLC; GSAM Stable Value, LLC; The Ayco Company, L.P.; Aptitude Investment Management LP; Rocatton Investment Advisors, LLC; United Capital Financial Advisers, LLC; and PFE Advisers, Inc., and any future ‘affiliate’ of Goldman (as defined in Part VI(d) of PTE 84–14) that qualifies as a ‘qualified professional asset manager’ (as defined in Section VI(a) of PTE 84–14) and that relies on the relief provided by PTE 84–14. The term ‘Goldman Sachs Affiliated QPAMs’ excludes Goldman Sachs Malaysia.”

The Applicant requests that the Department modify the definition of Goldman Sachs Affiliated QPAM so that it covers all of the Applicant’s current affiliates, not just the specific existing QPAMs listed in the application and future affiliates.

Section II(d) of this Exemption: The Department agrees with the Applicant’s comment, and Section II(d) of this exemption is now consistent with the Applicant’s request.

V. Additional Requested Revisions

In addition to the comments noted above, the Applicant requested the Department note the following regarding certain statements in the Proposed Exemption:

A. Paragraph 8 of the proposed exemption states: “For purposes of Section I(g) of PTE 84–14, the date Goldman is sentenced is the Conviction Date.” The Applicant notes that, “Goldman Sachs Malaysia” is the pleading entity.

B. Paragraph 10 of the proposed exemption states: “Tim Leissner (Leissner) was employed by Goldman between 1998 and 2016.” The Applicant notes that Leissner was never employed by Goldman itself, but by various Goldman subsidiaries.

Comment From the Public

The Department received one comment from the public. The commenter requested that the Department deny the Applicant’s exemption request, without raising any substantive issues.

After full consideration and review of the entire record, the Department has decided to grant the exemption, with the modifications discussed above. The complete application file (D–12030) is available in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on January 4, 2021 at 86 FR 131.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: The exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption

Section I. Covered Transactions

The Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs (as defined in Section II(d) and (e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption)³ during the Exemption Period, notwithstanding the Goldman Sachs Malaysia Conviction, as defined in Section II(a), provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within a Goldman Sachs Affiliated QPAM, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs (including their officers, directors, agents (other than Goldman Sachs Malaysia), and the employees of the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs) did not know of, did not have reason to know of, or did not participate in the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia Conviction. Further, any other party engaged on behalf of the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to

know of, or participate in the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia Conviction. For purposes of this proposed exemption, “participate in” refers not only to active participation in the criminal conduct that is the subject of the Goldman Sachs Malaysia Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the individual’s supervisors, and to the Board of Directors;

(b) Other than a single individual who worked for a non-fiduciary business within a Goldman Sachs Affiliated QPAM, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs (including their officers, directors, agents (other than Goldman Sachs Malaysia), and employees of such Goldman Sachs Affiliated QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia Conviction. Further, any other party engaged on behalf of the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia Conviction;

(c) The Goldman Sachs Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia Conviction;

(d) At all times during the Exemption Period, no Goldman Sachs Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such Goldman Sachs Affiliated QPAM with respect to one or more Covered Plans (as defined in Section II(b)) to enter into any transaction with Goldman Sachs Malaysia or to engage Goldman Sachs Malaysia to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the

scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Goldman Sachs Malaysia Conviction;

(f) A Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would further the criminal conduct that is the subject of the Goldman Sachs Malaysia Conviction; or cause the Goldman Sachs Affiliated QPAM, Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Goldman Sachs Malaysia Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Goldman Sachs Malaysia will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that Goldman Sachs Malaysia will not be treated as violating the conditions of this exemption solely because they acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Within six months of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM must develop, maintain, implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the Goldman Sachs Affiliated QPAM are conducted independently of Goldman Sachs’ corporate management and business activities, and the corporate management and business activities of Goldman Sachs’ Malaysia. This condition does not preclude a Goldman Sachs Affiliated QPAM from receiving publicly available research and other widely available information from Goldman Sachs Malaysia;

(ii) The Goldman Sachs Affiliated QPAM fully complies with ERISA’s fiduciary duties, and with ERISA and the Code’s prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any

³ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

violation of these duties and provisions with respect to Covered Plans;

(iii) The Goldman Sachs Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the Goldman Sachs Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at that time, the Goldman Sachs Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The Goldman Sachs Affiliated QPAM complies with the terms of this five-year exemption;

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant Goldman Sachs Affiliated QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A Goldman Sachs Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the Goldman Sachs Affiliated QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Within six months of the effective date of the exemption, each Goldman Sachs Affiliated QPAM must develop, maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted at least annually, for all relevant Goldman Sachs Affiliated

QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) Each Goldman Sachs Affiliated QPAM submits to three audits conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each Goldman Sachs Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first audit must cover the twelve month period that ends on the date that is two years following the date of the Goldman Sachs Malaysia Conviction, and must be completed within six months thereafter. The second audit must cover the twelve month period that ends on the date that is four years following the date of the Goldman Sachs Malaysia Conviction, and must be completed within six months thereafter. The third audit must cover the fifth year covered by this exemption, and must be completed within six months thereafter. The corresponding certified Audit Reports must be submitted to the Department no later than 45 days following the completion of the audit.

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, each Goldman Sachs Affiliated QPAM and, if applicable, Goldman Sachs, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each Goldman Sachs Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this five-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each Goldman Sachs Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each Goldman Sachs Affiliated QPAM, a sample of such Goldman Sachs Affiliated QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such Goldman Sachs Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Goldman Sachs and the Goldman Sachs Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the Goldman Sachs Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Goldman Sachs Affiliated QPAM's Policies and Training; each Goldman Sachs Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Goldman Sachs Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The Goldman Sachs Affiliated QPAM must promptly address any noncompliance. The Goldman Sachs Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Goldman Sachs Affiliated QPAM. Any action taken or the plan of action to be taken by the respective Goldman Sachs Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan

of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a Goldman Sachs Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Goldman Sachs Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Goldman Sachs Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(6) The auditor must notify the respective Goldman Sachs Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel or one of the three most senior executive officers of the Goldman Sachs Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the Goldman Sachs Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the Department of Justice's Statement of Facts that gave rise to the

Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) The Goldman Sachs Board of Directors is provided a copy of the Audit Report; a senior executive officer of the Audit Committee established by the Goldman Sachs Board of Directors, the general counsel of the Goldman Sachs Affiliated QPAM to which the Audit Report applies, one of the three most senior executive officers of the Goldman Sachs Affiliated QPAM to which the Audit Report applies, or the Chief Compliance Officer of Goldman Sachs must (i) review the Audit Report for each Goldman Sachs QPAM with the Chairperson of the Audit Committee and (ii) must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report, a copy of such Audit Report was provided to the Board of Directors, and that the Audit Report was reviewed with and by the Chairperson of the Audit Committee;

(9) Each Goldman Sachs Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this five-year exemption. Furthermore, each Goldman Sachs Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) Goldman Sachs or a Goldman Sachs Affiliated QPAM must notify the Department of a change in the independent auditor no later than two months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a

description of any material disputes involving the terminated auditor;

(j) As of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a Goldman Sachs Affiliated QPAM and a Covered Plan, the Goldman Sachs Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a Goldman Sachs Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable, a breach of contract by the QPAM, or any claim arising out of the failure of such Goldman Sachs Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Goldman Sachs Malaysia Conviction. This condition applies only to actual losses caused by the Goldman Sachs Affiliated QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Goldman Sachs Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Goldman Sachs Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Goldman Sachs Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Goldman Sachs and its affiliates, or damages arising from acts outside the control of the Goldman Sachs Affiliated QPAM;

(7) Within four (4) months of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM on or after a date that is four (4) months after the effective date of this exemption, the Goldman Sachs Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the Goldman Sachs Affiliated QPAM and such clients, or other written contractual agreement. Notwithstanding the above, a Goldman Sachs Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(k) Within 60 days of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM will provide a **Federal Register** copy of the notice of the exemption, along with a separate summary describing the facts that led to the Goldman Sachs Malaysia FCPA Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Goldman Sachs Malaysia FCPA Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or

investment management agreement with a Goldman Sachs Affiliated QPAM, or the sponsor of an investment fund in any case where a Goldman Sachs Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the Goldman Sachs Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the five-year exemption);

(l) The Goldman Sachs Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Goldman Sachs Malaysia Conviction. If, during the Exemption Period, an entity within the Goldman Sachs corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Goldman Sachs Malaysia Conviction), relief in this exemption would terminate immediately;

(m)(1) Within 60 days of the effective date of this exemption, each Goldman Sachs Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each Goldman Sachs Affiliated QPAM or applicable line of business may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the Department of Justice's Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must be: (i) A compliance officer who regularly reports to the Audit Committee; or (ii) the highest-ranking compliance officer at the applicable Goldman Sachs Affiliated QPAM or line of business.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the Goldman Sachs Affiliated QPAMs' compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or the Audit Committee, during the previous year; the most recent Audit Report issued pursuant to this exemption; any material change in the relevant business activities of the Goldman Sachs Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Goldman Sachs Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the Goldman Sachs Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known

instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of Goldman Sachs and Goldman Sachs Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of Goldman Sachs and the relevant Goldman Sachs Affiliated QPAM; and the report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The first Exemption Review, including the Compliance Officer's written Exemption Report, must cover the twelve month period beginning on the date of the Goldman Sachs Malaysia Conviction. The next four Exemption Reviews and Exemption Reports must each cover a twelve month period that begins on the date that follows the end of a prior Exemption Review coverage period. Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three months following the end of the period to which it relates;

(n) Goldman Sachs imposes its internal procedures, controls, and protocols on Goldman Sachs Malaysia to reduce the likelihood of any recurrence of conduct that is the subject of the Goldman Sachs Malaysia Conviction;

(o) Goldman Sachs complies in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Goldman Sachs Malaysia Conviction;

(p) Each Goldman Sachs Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six years following the date of any transaction for which such Goldman Sachs Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, Goldman Sachs must: (1) Immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by The Goldman Sachs Group, Inc. or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days of the effective date set forth in Section I(h)(1), each Goldman Sachs Affiliated QPAM, in its

agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the Goldman Sachs Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six months following the end of the calendar year during which the Policies were changed.⁴ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A Goldman Sachs Affiliated QPAM will not fail to meet the terms of this five-year exemption solely because a different Goldman Sachs Affiliated QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Goldman Sachs or its affiliates.

Section II. Definitions

(a) The term "Goldman Sachs Malaysia FCPA Conviction" means the judgment of conviction against Goldman Sachs Malaysia in connection with a U.S. plea by Goldman Sachs Malaysia to one count of conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, see Title 15, United States Code, Sections 78dd-1 and 78dd-3.

(b) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a Goldman Sachs Affiliated QPAM relies on PTE 84-14, or with respect to which a Goldman Sachs Affiliated QPAM (or any Goldman Sachs affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class

exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Goldman Sachs Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term "Goldman Sachs" means The Goldman Sachs Group, Inc.

(d) The term "Goldman Sachs Affiliated QPAMs" means The Goldman Sachs Trust Company, N.A.; Goldman Sachs Bank USA; Goldman Sachs & Co. LLC; Goldman Sachs Asset Management, L.P.; Goldman Sachs Asset Management International; Goldman Sachs Hedge Fund Strategies LLC; GS Investment Strategies, LLC; GSAM Stable Value, LLC; The Ayco Company, L.P.; Aptitude Investment Management LP; Rocatone Investment Advisors, LLC; United Capital Financial Advisers, LLC; and PFE Advisers, Inc., and any current or future "affiliate" of Goldman Sachs (as defined in Part VI(d) of PTE 84-14) that qualifies as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14)⁵ and that relies on the relief provided by PTE 84-14 and with respect to which Goldman Sachs is a current or future "affiliate" (as defined in Section VI(d) of PTE 84-14). The term "Goldman Sachs Affiliated QPAMs" excludes Goldman Sachs Malaysia.

(e) The term Goldman Sachs Related QPAMs means any current or future "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which Goldman Sachs owns a direct or indirect five (5) percent or more interest, but with respect to which Goldman Sachs is not an "affiliate" (as defined in section VI(d)(1) of PTE 84-14). The term "Goldman Sachs Related QPAMs" excludes Goldman Sachs Malaysia.

(f) The term Goldman Sachs Malaysia means Goldman Sachs (Malaysia) Sdn. Bhd.

(g) The term "Exemption Period" means the five-year period beginning on the date Goldman Sachs Malaysia is sentenced for one count of conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the

⁴ In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

⁵ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Foreign Corrupt Practices Act of 1977, as amended, see Title 15, United States Code, Sections 78dd–1 and 78dd–3.

(h) The term “Plea Agreement” means the Plea Agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Fraud Section and Money Laundering and Asset Recovery Section, and the United States Attorney’s Office for the Eastern District of New York and Goldman Sachs (Malaysia) Sdn. Bhd. Cr. No. 20–438 (MKB).

Effective Date: This exemption will be in effect for a period of up to five (5) years, beginning on the date of the conviction of Goldman Sachs (Malaysia) Sdn. Bhd.

Signed at Washington, DC, this 24th day of May, 2021.

Christopher Motta,

*Chief, Division of Individual Exemptions,
Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2021–11366 Filed 5–27–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the “Survey of Occupational Injuries and Illnesses.” A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before July 27, 2021.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for “Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics.” The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating state statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the Nation’s primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to assess the Nation’s progress in improving the safety and health of America’s work places; to prioritize scarce federal and state resources; to guide the development of injury and illness prevention strategies; and to support Occupational Safety and Health Administration (OSHA) and state safety and health standards and research. Data are essential for evaluating the effectiveness of federal and state programs for improving work place safety and health. For these reasons, it is necessary to provide estimates separately for participating states.

Effective with the release of estimates from the Survey of Occupational Injuries and Illnesses (SOII) in November 2023, the Bureau of Labor

Statistics (BLS) will introduce the publication of a new biennial case and demographic data series for cases that involve days of job transfer or restriction (DJTR) for all industries. This shift will result in significant changes to the SOII news release and how publication tables are presented to provide additional data on the case circumstances and worker demographics for DJTR cases, in addition to details that have long been published for cases involving days away from work (DAFW). Biennial estimates for DJTR and DAFW will be released together. Summary industry estimates, produced annually, will remain unchanged.

II. Current Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. The survey measures the overall rate of occurrence of work injuries and illnesses by industry for private industry, state governments, and local governments. For the more serious injuries and illnesses, those with days away from work (DAFW), the survey provides detailed information on the injured/ill worker (age, sex, race, industry, occupation, and length of service), the time in shift, and the circumstances of the injuries and illnesses classified by standardized codes (nature of the injury/illness, part of body affected, primary and secondary sources of the injury/illness, and the event or exposure which produced the injury/illness).

Days of job transfer or restriction (DJTR) cases have become more prevalent since 1992 when detailed data were first collected only for days-away-from-work (DAFW) cases. In 1992, DJTR cases accounted for 21 percent of total days away from work, days of restricted work activity, or job transfer cases (DART). By 2011, DJTR accounted for 40 percent of these cases. At that time, the Bureau of Labor Statistics (BLS) began a series of three 3-year pilot studies from 2011–19 to collect DJTR case details for select industries. When these pilot studies concluded with 2019 data, DJTR cases accounted for 43 percent of DART cases.

The aforementioned pilot studies conducted by the BLS were intended to learn more about occupational injuries and illnesses that resulted in days of job transfer or work restriction (DJTR) by comparing the circumstances and worker characteristics of injuries and illnesses that required days away from work (DAFW) to recuperate and those that led to DJTR only. Detailed data on DJTR cases will lead to a better understanding of how occupational

injuries and illnesses are managed and give a more complete accounting of the types of injuries and illnesses that occur to workers and how they occurred. Prior to these pilot studies, the BLS Survey of Occupational Injuries and Illnesses (SOII) collected and published only data on the case circumstances and worker characteristics for DAFW cases. These pilot studies expanded the SOII to collect and report the same detail for DJTR cases for select industries. Data from these pilots can be found at <https://www.bls.gov/iif/soii-data.htm#djtr>.

The proportion of DJTR cases as a percentage of DART cases among private industry overall has trended higher since 1992, while the proportion of DAFW cases has trended downward over this period. Both the incidence rate and number of cases of DJTR has exceeded that of DAFW in the manufacturing industry sector since the late 1990s. The pilot collection of DJTR case details has provided important insights into workplace safety and health data that were previously unavailable. Analysis of DJTR data showed that their inclusion provides a more complete understanding of the circumstances leading to occupational injuries and illnesses than DAFW cases alone can provide. For example, DJTR cases as a percentage of DART cases in the Food services and drinking places industry remained the same regardless

of the age of the worker. While in the Amusement, gambling, and recreation industry, workers under the age of 45 had a higher percentage of DJTR cases than DAFW cases. If studying only a few selected industries, policy makers and researchers would be unable to determine the complete picture of this phenomenon. If all industries could be analyzed, safety resources and return-to-work strategies could be developed to address the unique work experiences by the age of the worker or by other characteristics.

Based on the findings from these studies and the depth of information they produced, as well as the recommendation from the National Academy of Sciences (NAS) *A Smarter National Surveillance System for Occupational Safety and Health in the 21st Century*,¹ the BLS decided to collect information on DJTR cases for all industries. Particularly, Recommendation A from Chapter 4 of the NAS report noted, "BLS should routinely collect detailed case and demographic data for injuries and illnesses resulting in job transfer or restricted duty as well as those resulting in days away from work." The report further notes that this could be easily accomplished in the short term with minimal impact to respondent burden due to the fact that these data are already recorded by employers.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220-0045.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Farms; State, Local or Tribal Governments.

BLS 9300 RESPONDENT BURDEN ESTIMATES

Form 9300	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated burden hours
Total Reporting Burden	86,200	Annually	86,200	63.698	91,513
Total Recording Burden	232,800	Annually	232,800	24.831	96,346
Totals	232,800	Annually	232,800	.....	187,859

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 25th day of May 2021.

Leslie Bennett,

Acting Chief, Division of Management Systems.

[FR Doc. 2021-11367 Filed 5-27-21; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the summaries of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 28, 2021.

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th

¹ See <https://www.nap.edu/catalog/24835/a-smarter-national-surveillance-system-for-occupational-safety-and-health-in-the-21st-century>.

Street South, Suite 4E401, Arlington, Virginia 22202-5452.

Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Jessica D. Senk, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), *Senk.Jessica@dol.gov* (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2021-016-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Enlow Fork Mine, MSHA ID No. 36-07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing

standard, 30 CFR 75.507-1(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Enlow Fork Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX in return air outby the last open crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels.

Because of those issues, 3M discontinued the Airstream™ in June 2020, and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada,

and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of "ia." (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, -20 °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX

PAPRs that shall be kept with the equipment or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the “high filter load alarm” on the 3M™ Versaflo™ TR-800 and the “blocked filter” alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800 shall include:

- i. Check the equipment for any physical damage and the integrity of the case;
- ii. Remove the battery and inspect for corrosion;
- iii. Inspect the contact points to ensure a secure connection to the battery;
- iv. Reinsert the battery and power up and shut down to ensure proper connections;
- v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.
- vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used in the return air outby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX in the return air outby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in the return air outby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133 in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be “changed out” in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

- i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance

with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used in return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-017-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Enlow Fork Mine, MSHA ID No. 36-07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection for miners at the Enlow Fork Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR), and the CleanSpace EX in or inby the last crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 unit which benefits from additional features

and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels.

Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the US, Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of "ia." (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, -20 °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of

CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the "high filter load alarm" on the 3M™ Versaflo™ TR-800 and the "blocked filter" alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be

physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800I shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used inby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX inby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in the return air inby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be "changed out" in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a

record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2021–018–C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Enlow Fork Mine, MSHA ID No. 36–07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors: Permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Enlow Fork Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR–800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream product line that have created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for

systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR–800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). The 3M™ Versaflo™ TR–800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). ATEX-certified with an IS rating of “ia.” (ATEX refers to European directives for controlling explosive atmospheres.) It is marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIC 135 °C Da, – 20 °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR–800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR–800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA’s standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR–800 and the CleanSpace EX PAPRs

in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the “high filter load alarm” on the 3M™ Versaflo™ TR–800 F and the “blocked filter” alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs to be used on the longwall face or within 150 feet of pillar workings shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer’s recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR–800F shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used on the longwall face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX in by the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX on the longwall face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be "changed out" in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or,

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the

3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX PAPR.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used on the longwall face or within 150 feet of pillar workings. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Jessica Senk,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2021–11368 Filed 5–27–21; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No.: OSHA–2020–0003]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of ACCSH membership.

SUMMARY: On May 11, 2021, the Secretary selected 15 members to serve on the Advisory Committee on Construction Safety and Health (ACCSH).

FOR FURTHER INFORMATION CONTACT:

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

For general information about ACCSH and ACCSH membership: Mr. Damon Bonneau, OSHA, Directorate of Construction; telephone: (202) 693–2020; email: bonneau.damon@dol.gov.

Copies of this Federal Register document: Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, are also available on the OSHA web page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the CSA and OSHA regulations require the Assistant Secretary to consult with ACCSH before the agency proposes any occupational safety and health standard affecting

construction activities (40 U.S.C. 3704); 29 CFR 1911.10.

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (8/31/2020). ACCSH generally meets two to four times a year.

II. Appointment of Committee Members

ACCSH consists of 15 members appointed by the Secretary. ACCSH members generally serve two-year terms, unless they resign, cease to be qualified, become unable to serve, or the Secretary removes them (29 CFR 1912.3(e)). The Secretary may appoint ACCSH members to successive terms. The allocation of members for each category of ACCSH membership is:

- Five members who are qualified by experience and affiliation to present the viewpoint of employees in the construction industry;
- Five members who are similarly qualified to present the viewpoint of employers in the construction industry;
- Two public members, qualified by knowledge and experience to make a useful contribution to the work of ACCSH, such as those who have professional or technical experience and competence with occupational safety and health in the construction industry;
- Two representatives of State safety and health agencies; and
- One representative designated by the Secretary of the Department of Health and Human Services.

OSHA received nominations of highly qualified individuals in response to the agency's request for nominations (85 FR 79221, December 9, 2020). The Secretary appointed individuals to serve on the Committee who have broad experience relevant to the issues to be examined by the Committee. The ACCSH membership is as follows:

Employee Representatives

- Cheryl M. Ambrose, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada;
- Christina Trahan Cain, North America's Building Trades Unions (ACCSH Chair);
- Wayne J. Creasap II, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers;
- Ryan Papariello, Laborers Health and Safety Fund of North America; and
- David Wysocki, International Masonry Training and Education Foundation.

Employer Representatives

- Kevin Cannon, The Associated General Contractors of America;
- Julie Carter, Roy Anderson Corp;
- Fravel E. Combs, M.A. Mortenson, Company;
- Greg Sizemore, Associated Builders and Contractors; and
- Wesley L. Wheeler, National Electrical Contractors Association.

Public Representatives

- Christopher Fought, Merck; and
- R. Ronald Sokol, Safety Council of Texas City.

State Representatives

- Christopher Scott Mabry, North Carolina Department of Labor Occupational Safety and Health Division; and
- Charles Stribling, Kentucky Labor Cabinet Department of Workplace Standards.

Federal Representative

- Dr. G. Scott Earnest, National Institute for Occupational Safety and Health.

Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary's Order 8–2020 (85 FR 58393), 5 U.S.C. App. 2, and 29 CFR part 1912.

Signed at Washington, DC, on May 21, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–11291 Filed 5–27–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0007]

Nationally Recognized Testing Laboratory Program Regulation; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: OSHA requests comments concerning the proposed extension of the information collection requirements specified by the Program Regulation for Nationally Recognized Testing

Laboratories (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for safe use in the workplace.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 27, 2021.

ADDRESSES:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2017–0014). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Washington, DC; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44

U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection from employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

A number of standards issued by OSHA contain requirements that specify employers use only equipment, products, or material tested or approved by a Nationally Recognized Testing Laboratory (NRTL). These requirements ensure that employers use safe and efficacious equipment, products, or materials in complying with the standards. Accordingly, OSHA promulgated the Program Regulation for Nationally Recognized Testing Laboratories, 29 CFR 1910.7 (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for safe use in the workplace.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

1. Whether the proposed information collection requirements are necessary and useful for the proper performance of the agency's functions;
2. The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information collected; and
4. Ways to minimize the burden on organizations that must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements specified by the Regulation. The agency revised the

estimate of the number of audits it conducts each year upward, from 44 to 47, because the agency has recognized three additional NRTLs, bringing the total number of recognized laboratories to 23. This revised estimate accounts for the increased burden hours to complete paperwork, from 1,523 to 1,571 and the increased total costs to respondents resulting from collections of information, from \$728,352 to \$757,440. The agency also revised its average hourly rate estimate for an electrical engineer upward, from \$47.41 to \$74.18, based on current BLS data. This revised estimate and the agency's revised estimate for the number of audits it conducts each year accounts for the increased cost estimates to complete paperwork, from \$72,205.43 to \$116,589.45. The agency will summarize the comments submitted in response to this Notice, and will include this summary in the request to OMB to revise the approval of these information collection requirements.

Type of Review: Extension of a currently approved information collection.

Title: Definition and Requirements of a Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Control Number: 1218–0147.

Affected Public: Business or other for-profit.

Number of Respondents: 23.

Frequency of Recordkeeping: On occasion.

Total Responses: 145.94.

Average Time per Response: Varies.

Estimated Total Burden Hours: 1,571.71.

Estimated Cost (Operation and Maintenance): \$757,440.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0007). You may supplement electronic submissions by uploading document files electronically. If you wish to mail

additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health authorized the preparation of this notice. The agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), OSHA's Program Regulation for Nationally Recognized Testing Laboratories, 29 CFR 1910.7, and the Paperwork Reduction Act of 1995 (44 U.S.C 3506 *et seq.*).

Signed at Washington, DC, on May 21, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021-11369 Filed 5-27-21; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[21-031]

Name of Information Collection: KSC COVID-19 Vaccine Scheduling Application

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 June 28, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this 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 Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email claire.a.little@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Kennedy Space Center (KSC) has been tasked by National Aeronautics and Space Administration (NASA) to prepare to provide COVID-19 vaccines to a prioritized set of employees. These vaccines could be provided to KSC by either the State of Florida Department of Health (via the Florida State Health Online Tracking System (SHOTS) program) or directly by the Federal Government.

Employee data and other medical data related to the vaccination, is required by the State of Florida to be uploaded to the Florida SHOTS website within 24 hours of vaccination. This data is also required by NASA to be entered into the Agency's CORITY electronic health records system, and subsequently be provide to the Centers for Disease Control and Prevention (CDC).

II. Methods of Collection

Eventbrite will be used to gather a subset of this data electronically directly

from the employee during registration in lieu of manual entry based on a completed paper form.

III. Data

Title: KSC COVID-19 Vaccine Scheduling application.

OMB Number: 2700-.

Type of review: New.

Affected Public: Government Contractors and Civil Servants.

Estimated Annual Number of Activities: 1.

Estimated Number of Respondents per Activity: 3,336.

Annual Responses: 3,336.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 278 hours.

Estimated Total Annual Cost: \$11,073.60.

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.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2021-11295 Filed 5-27-21; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[NRC-2020-0231]

Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG), RG 1.205, "Risk-Informed, Performance-Based Fire

Protection for Existing Light-Water Nuclear Power Plants”. This RG describes an approach that is acceptable to the NRC staff to meet the regulatory requirements in the NRC’s regulations and the National Fire Protection Association (NFPA) Standard 805, “Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,” 2001 Edition, which is incorporated by reference in the NRC’s regulations.

DATES: Revision 2 to RG 1.205 is available on May 28, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0231. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

Revision 2 to RG 1.205 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21048A448 and ML20231A891, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT:

Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–

415–3104, email: Michael.Eudy@nrc.gov and Charles Moulton, Office of Nuclear Reactor Regulation, telephone: 301–415–2715, email: Charles.Moulton@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC’s “Regulatory Guide” series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency’s regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 2 to RG 1.205 was issued with a temporary identification of Draft Regulatory Guide, DG–1360. This revision of the guide (Revision 2) addresses new information identified since the guide was previously revised in 2009. This RG updates the previous staff positions and endorsements made regarding earlier versions of Nuclear Energy Institute (NEI) guidance documents, NEI–04–02, “Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c),” and NEI 00–01, “Guidance for Post Fire Safe Shutdown Circuit Analysis.” This revision endorses NEI 04–02, Revision 3, issued 2019, and portions of NEI–00–01, Revision 4, issued 2019, and includes guidance concerning fire-induced circuit failures.

II. Additional Information

The NRC published a notice of the availability of DG–1360 in the **Federal Register** on November 16, 2020 (85 FR 73088) for a 45-day public comment period. The public comment period closed on December 31, 2020. Public comments on DG–1360 and the staff responses to the public comments are available in ADAMS under Accession No. ML21048A449.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

RG 1.205, Revision 2, would incorporate the latest information concerning risk-informed, performance-

based fire protection programs and supporting guidance. Issuance of RG 1.205, Revision 2, would not constitute backfitting, as that term is defined in section 50.109 of title 10 of *Code of Federal Regulations* (CFR), “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests”; constitute forward fitting, as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. As explained in RG 1.205, Revision 2, applicants and licensees would not be required to comply with the positions set forth in RG 1.205, Revision 2.

Dated: May 24, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–11297 Filed 5–27–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0230]

Fire Protection for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 4 to Regulatory Guide (RG), 1.189, “Fire Protection for Nuclear Power Plants.” This RG describes an approach that is acceptable to the NRC staff to meet the regulatory requirements in the NRC’s regulations governing a civilian nuclear power generating plant’s fire protection program.

DATES: Revision 4 to RG 1.189 is available on May 28, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0230 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0230. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *Attention*: The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

Revision 4 to RG 1.189 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21048A441 and ML20231A874, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301-415-1304, email: Michael.Eudy@nrc.gov and Charles Moulton, Office of Nuclear Reactor Regulation, telephone: 301-415-2751, email: Charles.Moulton@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 4 to RG 1.189 was issued with a temporary identification of Draft Regulatory Guide, DG-1359. This revision of the guide (Revision 4) addresses new issues identified since the guide was previously revised and released in 2018. This includes incorporation of the latest guidance on fire-induced circuit failures, multiple

high impedance failures, open secondary circuits on current transformers, and shorting switches. Updates also include partial endorsements of Nuclear Energy Institute 00-01, "Guidance for Post Fire Safe Shutdown Circuit Analysis," Revision 4, issued September 2016, and guidance based on NUREG/CR-7150, "Joint Assessment of Cable Damage and Quantification of Effects from Fire (JACQUE-FIRE)," Volumes 1, 2, and 3 (ADAMS Accession Nos. ML12313A105, ML14141A129, and ML17331B098.)

II. Additional Information

The NRC published a notice of the availability of DG-1359 in the **Federal Register** on November 16, 2020 (85 FR 73089) for a 45-day public comment period. The public comment period closed on December 31, 2020. Public comments on DG-1359 and the staff responses to the public comments are available in ADAMS under Accession No. ML21048A440.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

The issuance of RG 1.189, Revision 4, would provide the most recent guidance acceptable to the NRC staff for compliance with paragraph 50.48(a) and (b) of title 10 of the *Code of Federal Regulations* (10 CFR) and 10 CFR part 50, appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." Issuance of RG 1.189, Revision 4, would not constitute backfitting, as that term is defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; constitute forward fitting, as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. As explained in RG 1.189, Revision 4, applicants and licensees would not be required to comply with the positions set forth in RG 1.189, Revision 4.

Dated: May 24, 2021.

For the Nuclear Regulatory Commission.
Meraj Rahimi,
Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.
[FR Doc. 2021-11298 Filed 5-27-21; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 31, June 7, 14, 21, 28, July 5, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of May 31, 2021

There are no meetings scheduled for the week of May 31, 2021.

Week of June 7, 2021—Tentative

Tuesday, June 8, 2021

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting)
(Contact: Anne DeFrancisco: 610-337-5078)

Additional Information: Due to COVID-19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—<https://video.nrc.gov/>.

Thursday, June 10, 2021

10:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting)
(Contact: Nicole Fields: 630-829-9570)

Additional Information: Due to COVID-19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—<https://video.nrc.gov/>.

Week of June 14, 2021—Tentative

There are no meetings scheduled for the week of June 14, 2021.

Week of June 21, 2021—Tentative

Tuesday, June 22, 2021

9:00 a.m. Briefing on Transformation at the NRC—Midyear Review (Public Meeting)
(Contact: Maria Arribas-Colon: 301-415-6026)

Additional Information: Due to COVID-19, there will be no physical

public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—<https://video.nrc.gov/>.

Week of June 28, 2021—Tentative

There are no meetings scheduled for the week of June 28, 2021.

Week of July 5, 2021—Tentative

There are no meetings scheduled for the week of July 5, 2021.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at Wesley.Held@nrc.gov. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Wendy.Moore@nrc.gov or Tyesha.Bush@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 26, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2021–11485 Filed 5–26–21; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 27907, May 24, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 27, 2021 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, May 27, 2021 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: May 26, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021–11500 Filed 5–26–21; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91976; File No. SR–ISE–2021–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE's Pricing Schedule at Options 7, Section 5, for NQX Index Options Fees and Rebates for Regular and Complex Orders

May 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 11, 2021, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE's Pricing Schedule at Options 7, Section 5, Index Options Fees and Rebates.

The Exchange originally filed the proposed pricing change on April 30, 2021 (SR–ISE–2021–10). On May 11, 2021, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 5, Index Options Fees and Rebates. Specifically, the Exchange proposes to amend Part B, NQX Index Options Fees and Rebates for Regular and Complex Orders. NQX is a proprietary index based on 1/5 the value of the Nasdaq–100 Index.

Currently, the fees and rebates assessed for NQX regular and complex orders are as follows:

Market participant	Maker fee/rebate	Taker fee/rebate
Market Maker	(\$0.25)	\$0.00
Market Maker (for orders sent by Electronic Access Members)	(0.25)	0.00
Non-Nasdaq ISE Market Maker (FarMM)	0.25	0.25
Firm Proprietary/Broker-Dealer	0.25	0.25
Professional Customer	0.25	0.25

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Market participant	Maker fee/rebate	Taker fee/rebate
Priority Customer	0.00	0.00

NQX Taker Fees apply to the originating and contra side of Crossing Orders and to Responses to Crossing Orders. The Exchange proposes to amend this pricing.

First, the Exchange proposes to amend the NQX regular and complex order pricing for Market Makers,³ including for orders sent by Electronic Access Members, to remove the current Maker Rebates of \$0.25 per contract. The Exchange proposes to instead assess a Maker Fee of \$0.25 per contract to Market Makers, including for orders sent by Electronic Access Members, similar to other Non-Priority Customers⁴ in NQX. Since no market participants would be subject to an NQX Maker Rebate with the removal of the Market Maker rebates, the Exchange also proposes to amend the column header from “Maker Fee/Rebate” to “Maker Fee.” The Exchange also proposes to amend the column header “Taker Fee/Rebate” to “Taker Fee” as there are no Taker Rebates.

Second, the Exchange proposes to amend the current regular and complex order NQX Taker Fees for Market Makers, including for orders sent by Electronic Access Members, from \$0.00 per contract to \$0.25 per contract.

With this proposal, ISE would uniformly assess a \$0.25 per contract NQX Maker and Taker Fee to all market participants for regular and complex orders, except Priority Customers. Priority Customers will continue to pay no NQX Maker or Taker Fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”⁷

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its

broader forms that are most important to investors and listed companies.”⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange’s proposal to amend its NQX regular and complex order pricing for Market Makers, including for orders sent by Electronic Access Members, to remove the \$0.25 per contract Maker Rebate and instead assess a \$0.25 per contract Maker Fee, and start assessing a \$0.25 per contract Taker Fee⁹ is reasonable. The Exchange initially paid NQX Maker Rebates to Market Makers, including for orders sent by Electronic Access Members, to encourage Market Maker activity in NQX and offset the NQX license surcharge of \$0.25 per contract, which is paid by all market participants. The Exchange desired to incentivize Market Makers to provide liquidity in the new product during the initial months of trading when it initially offered Market Makers these incentives in 2018.¹⁰ As NQX has been trading for over 2 years at this time, the Exchange proposes to align the pricing for Market Makers, including for orders sent by Electronic Access Members, with other Non-Priority Customer participants that currently pay \$0.25 per contract Maker and Taker Fees. Also, the proposed pricing aligns with pricing for the Nasdaq-100 Index (“NDX”),

³ The term Market Makers refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21). The term Competitive Market Maker means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12). The term Primary Market Maker means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(36).

⁴ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail” as defined below. A Non-Priority Customer would include a Market Maker, Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer, and Professional Customer.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ Market Makers, including for orders sent by Electronic Access Members, currently pay no NQX regular or complex order Taker Fees.

¹⁰ See Securities Exchange Act Release No. 83639 (July 16, 2018), 83 FR 34625 (July 20, 2018) (SR–ISE–2018–61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange’s Schedule of Fees To Add Establish Fees and Rebates for NQX Options and Make Several Clarifying Changes).

another proprietary product, in that Non-Priority Customers are uniformly assessed a transaction fee for regular orders, regardless of whether they are making or taking liquidity, and Priority Customers are not assessed any fees. The \$0.25 per contract fee is reasonable as NQX is an exclusively listed product on ISE only. Also, the \$0.25 per contract fee is well within the range of amounts assessed for NDX options, another Exchange proprietary product which assesses a \$0.75 per contract fee to Non-Priority Customers. The lower fee amount of \$0.25 per contract for NQX options as compared to \$0.75 per contract for NDX options is reasonable because NQX options is based on $\frac{1}{5}$ of the value of the Nasdaq-100 Index whereas NDX options are based on the full value of the Nasdaq-100 Index, and the Exchange therefore seeks to assess corresponding reduced fees for NQX options. The Exchange notes that market participants are offered an opportunity to either transact NDX options, the Nasdaq 100 Micro Index Options or "XND,"¹¹ or PowerShares QQQ Trust ("QQQ") options.¹² Although all of the products are based on the Nasdaq-100 Index, and collectively they offer various notional sizes as well as different fees.¹³ These products all offer exposure to the Nasdaq-100 Index which is different from exposure to competing products. Finally, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.¹⁴

The Exchange's proposal to amend its NQX regular and complex order pricing for Market Makers, including for orders sent by Electronic Access Members, to remove the \$0.25 per contract Maker Rebate and instead assess a \$0.25 per contract Maker Fee, and start assessing

a \$0.25 per contract Taker Fee is equitable and not unfairly discriminatory as ISE would uniformly assess a \$0.25 per contract fee to all market participants, except Priority Customers. Priority Customers will continue to pay no Maker or Taker Fee. All other Non-Priority Customers would uniformly be assessed a \$0.25 per contract fee regardless of whether the Non-Priority Customer is making or taking liquidity. The Exchange's proposal to amend the column headers from "Maker Fee/Rebate" to "Maker Fee" and "Taker Fee/Rebate" to "Taker Fee" is reasonable, equitable and not unfairly discriminatory as no Member would be subject to a Maker Rebate with the removal of the rebates for Market Makers, including for orders sent by Electronic Access Members and there are no Taker Rebates today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that the proposed changes will place any category of market participant at a competitive disadvantage. Overall, the Exchange's proposal is designed to incentivize participants to bring additional order flow to the Exchange, and create a more active and quality market in NQX. While Market Makers would pay a fee for either making or taking liquidity in NQX with this proposal, the Exchange believes that Market Makers will continue to be incentivized to offer liquidity in this product which is based on the Nasdaq-100 Index and offers investors similar strategies for investors. Market Makers on ISE are the only Market Makers making a market in NQX. Also, the Exchange would uniformly assess a \$0.25 per contract NQX fee to all market participants for regular and complex orders, except Priority Customers, regardless of whether the Non-Priority Customer is making or taking liquidity.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market where other options markets may create products similar to those offered on ISE. There are other products today which are similarly based on the Nasdaq-100 Index. Market participants are offered an opportunity to either transact NDX, XND, or QQQ options. Although all of the products are based on the Nasdaq-100 Index and offer various notional

sizes as well as different fees.¹⁵ These products all offer exposure to the Nasdaq-100 Index which is different from exposure to competing products.

The Exchange's proposal to amend the column headers from "Maker Fee/Rebate" to "Maker Fee" and "Taker Fee/Rebate" to "Taker Fee" does not impose an undue burden on competition as no Member would be subject to a Maker Rebate with the removal of the rebates for Market Makers, including Market Maker (for orders sent by Electronic Access Members) and there are no Taker Rebates today.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2021-11 on the subject line.

¹¹ XND is based on 1/100th of the value of the Nasdaq-100 Index.

¹² QQQ is an exchange-traded fund based on the Nasdaq-100 Index. Products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq-100 Index as QQQ options overlie the same index as NDX, namely the Nasdaq-100 Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index ("IWM"), which is the ETF on RUT.

¹³ See ISE Options 7, Section 3 for simple orders and Options 7, Section 4 for complex orders for pricing on QQQ options. XND options pricing is located within ISE Options 7, Section 5A. The applicable ISE complex order fees for Non-Select Symbols in Options 7, Section 4 apply to NDX options. See also Nasdaq Phlx LLC ("Phlx") Options 7, Section 4 for XND pricing. XND is currently listed only on Phlx.

¹⁴ See pricing for Russell 2000 Index ("RUT") on Cboe Exchange, Inc.'s Fees Schedule.

¹⁵ See ISE Options 7, Section 3 for simple orders and Options 7, Section 4 for Complex Orders for pricing on QQQ options. XND options pricing is located within Options 7, Section 5A. The applicable Complex Order fees for Non-Select Symbols in Options 7, Section 4 apply to NDX options. See also Nasdaq Phlx LLC ("Phlx") Options 7, Section 4 for XND pricing. XND is currently listed only on Phlx.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2021-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2021-11 and should be submitted on or before June 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11290 Filed 5-27-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday, June 10, 2021.

The meeting will begin at 10:00 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at www.sec.gov.

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting. On May 26, 2021, the Commission published notice of the Committee meeting (Release Nos. 33-10944, 34-92018), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee.

MATTER TO BE CONSIDERED: The agenda for the meeting includes: Welcome remarks; approval of previous meeting minutes; a panel discussion regarding best execution and its role in post-NMS market structure; a panel discussion regarding best execution issues unique to wholesale brokers; a panel discussion regarding 10b5-1 plans; a discussion of a recommendation regarding individual retirement accounts; subcommittee reports; and a non-public administrative session.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: May 26, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-11502 Filed 5-26-21; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91975; File No. SR-NYSE-2020-95]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and Make Related Changes to Rules 7.32, 7.35C, 46B, and 47

May 24, 2021.

On November 13, 2020, New York Stock Exchange LLC ("NYSE" or "Exchange") 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 make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Commentaries .01 and .03 to Rule 7.35B (DMM-Facilitated Closing Auctions) and to make related changes to Rules 7.32 (Order Entry), 7.35C (Exchange-Facilitated Closing Auctions), 46B (Regulatory Trading Official), and 47 (Floor Officials—Unusual Situations). The proposed rule change was published for comment in the **Federal Register** on December 1, 2020.³ On January 13, 2020, the Commission extended to March 1, 2021, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.⁴ On March 1, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶ On April 12, 2021, the Exchange filed Amendment No. 1⁷ to the proposed rule change with the Commission and submitted Amendment No. 1 for inclusion in the public comment file.⁸ The Commission has received no other comment letters on the proposed rule change, as modified by Amendment No. 1.

Section 19(b)(2) of the Act⁹ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90495 (Nov. 24, 2020), 85 FR 77304 (Dec. 1, 2020) (SR-NYSE-2020-95) ("Notice").

⁴ See Securities Exchange Act Release No. 90917 (Jan. 13, 2021), 86 FR 6403 (Jan. 21, 2020).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 91227, (Mar. 1, 2021), 86 FR 12991 (Mar. 5, 2021).

⁷ In Amendment No. 1, the Exchange proposes that the percentage parameter that would be applicable to when a DMM may electronically facilitate a Trading Halt Auction or would be required to publish a pre-opening indication would be 5% instead of 10%. See Letter from Martha Redding Associate General Counsel, NYSE LLC, to Secretary, Commission (April 12, 2021). Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nyse-2020-95/srnyse202095-8662901-235314.pdf>.

⁸ Comments received on the proposed rule changes, as modified by Amendment No. 1, are available on the Commission's website at <https://www.sec.gov/comments/sr-nyse-2020-95/srnyse202095.htm>.

⁹ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 1, 2020.¹⁰ May 30, 2021 is 180 days from that date, and July 29, 2021, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹¹ designates July 29, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSE-2020-95) as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11289 Filed 5-27-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34274; 812-15154]

Simplify Exchange Traded Funds and Simplify Asset Management Inc.

May 24, 2021.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements"). The requested exemption would permit an investment

adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Simplify Exchange Traded Funds (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Simplify Asset Management Inc., a New York corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Simplify" or the "Advisor," and, collectively with the Trust, the "Applicants").

FILING DATES: The application was filed on August 18, 2020, and amended on February 24, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 18, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: c/o JoAnn M. Strasser, Thompson Hine LLP, by email: *JoAnn.Strasser@thompsonhine.com*.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. The Advisor serves as the investment adviser to the Funds (as

defined below) pursuant to investment advisory agreements with the Funds (the "Advisory Agreements").¹ The Advisor will provide the Funds with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Fund's board of trustees ("Board"). The Advisory Agreements permit the Advisor, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a "Subadvisor" and collectively, the "Subadvisors") the responsibility to provide the day-to-day portfolio investment management of each Fund (either directly or through such Fund's direct wholly-owned subsidiary), subject to the supervision and direction of the Advisor. The primary responsibility for managing the Funds will remain vested in the Advisor. The Advisor will hire, evaluate, allocate assets to and oversee the Subadvisors, including determining whether a Subadvisor should be terminated, at all times subject to the authority of the Board.

2. Each Fund may pursue its investment strategies by investing through a direct wholly-owned subsidiary (each such subsidiary, a "Subsidiary"). Any future Subsidiary will enter into an investment advisory agreement with the respective Advisor (the "Subsidiary Advisory Agreements").² In all cases, an Advisor will be the entity providing general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets (either directly or through such Fund's Subsidiary, if any), and, subject to review and approval of the Board, will: (a) Set such Fund's (including, if any, its Subsidiary's) overall investment strategies; (b) evaluate, select and recommend Subadvisors to manage all or a portion of the Fund's assets (directly or through the Fund's Subsidiary, if any); (c)

¹ Applicants request relief with respect to any existing or future series of the Trust and any other registered open-end management investment company or series thereof that: (a) Is advised by Simplify or any entity controlling, controlled by or under common control with Simplify or its successors (each, also an "Advisor"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a "Fund"). For purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any future Subsidiary Advisory Agreement will be approved by the Board, including a majority of the trustees who are not "interested persons" (as defined in section 2(a)(19) of the Act) of the Fund or the Advisor, and the Fund's shareholders.

¹⁰ See Securities Exchange Act Release No. 90495 (Nov. 24, 2020), 85 FR 77304 (Dec. 1, 2020) (SR-NYSE-2020-95) ("Notice").

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(57).

allocate and, when appropriate, reallocate the Fund's assets among one or more Subadvisors (including by allocating and reallocating assets between and among the Fund and, if any, its Subsidiary); (d) monitor and evaluate the performance of Subadvisors; and (e) implement procedures reasonably designed to ensure that the Subadvisors comply with the investment objective, policies and restrictions of the Fund and the Subsidiary, if any.

3. Applicants request an order exempting Applicants from section 15(a) of the Act and rule 18f-2 thereunder to permit the Trust, on behalf of a Fund, and/or its Advisor, subject to the approval of the Board, to enter into and materially amend investment subadvisory agreements with Subadvisors ("Subadvisory Agreements") without obtaining shareholder approval.³ Applicants also seek an exemption from the Disclosure Requirements to permit a Fund to disclose (as both a dollar amount and a percentage of the Fund's net assets): (a) The aggregate fees paid to the Advisor and any Excluded Subadvisor; and (b) the aggregate fees paid to Subadvisors other than Excluded Subadvisors (collectively, "Aggregate Fee Disclosure"). For any Fund that employs an Excluded Subadvisor, the Fund will provide separate disclosure of any fees paid to the Excluded Subadvisor.

4. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Fund shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Funds' shareholders.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Advisory Agreements will remain

subject to shareholder approval, while the role of the Subadvisors is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Subadvisory Agreements would impose unnecessary delays and expenses on the Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Advisor's ability to negotiate fees paid to the Subadvisors that are more advantageous for the Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11292 Filed 5-27-21; 8:45 am]

BILLING CODE 8011-01-P

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance without change in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 1

Title: The Selective Service System Registration Form.

Purpose: Is used to register men and establish a data base for use in identifying manpower to the military services during a national emergency.

Respondents: All 18-year-old males who are United States citizens and those male immigrants residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of two minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Operations Directorate, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

Written comments and recommendations for the proposed extension of clearance with change of the form should be sent within 60 days of the publication of this notice to the Selective Service System, Operations

Directorate, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Thomas T. Devine,

Deputy Associate Director for Operations.

[FR Doc. 2021-11322 Filed 5-27-21; 8:45 am]

BILLING CODE 8015-01-P

DEPARTMENT OF STATE

[Public Notice 11431]

30-Day Notice of Proposed Information Collection: Foreign Service Officer Test Registration Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to June 28, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to Board of Examiners for the Foreign Service, Department of State SA-1, H-518, 2401 E Street NW, Washington, DC 20522.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Registration for the Foreign Service Officer Test.
- *OMB Control Number:* 1405-0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Human Resources, Board of Examiners.

³ The requested relief will not extend to any sub-adviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or an Advisor other than by reason of serving as a sub-adviser to one or more Funds (or any Subsidiary) ("Excluded Subadvisors").

- *Form Number:* DS-1998E.
- *Respondents:* Registrants for the Foreign Service Officer Test.
- *Estimated Number of Respondents:* 12,000.
- *Estimated Number of Responses:* 12,000.
- *Average Time per Response:* 2 hours.
- *Total Estimated Burden Time:* 24,000 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Officer Test will complete a Registration Form, asking for their name, contact information, ethnicity, education and work history, and military experience. The information will be used to prepare and issue admission to the Foreign Service Officer Test, to provide data useful for improving future tests, and to conduct research studies based on the test results.

Methodology

The registration process, which includes concurrent application submission and seat selection, opens approximately four (4) weeks prior to each testing window. To register, individuals go to pearsonvue.com/fsot/ during the four-week period prior to a specific testing window to create an account, submit completed eligibility verification and application forms, and

select a location and seat for the specific test date.

Kevin E. Bryant,

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

[FR Doc. 2021-11279 Filed 5-27-21; 8:45 am]

BILLING CODE 4710-15-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36516]

Reading Blue Mountain & Northern Railroad Company—Acquisition Exemption—Carbon County, Pa.

Reading Blue Mountain & Northern Railroad Company (RBMN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Carbon County, Pa. (the County), approximately 19.5-miles of rail line extending between milepost 19.5 near Tamenend, Schuylkill County, Pa., and milepost 0.0± at Packerton Jct., Carbon County, Pa. (the Line).¹

The verified notice states that RBMN entered into a Purchase and Sale Agreement with the County dated May 6, 2021, to acquire the Line. RBMN states that currently the Line is operated by C&S Railroad Corporation (C&S), which leases the Line from the County. According to RBMN, when RBMN acquires the Line, C&S's lease with the County will be terminated and RBMN will enter into a new lease with C&S to permit C&S to continue to lease and operate the Line.²

RBMN certifies that the acquisition does not impose or include an interchange commitment. RBMN further certifies that its projected annual revenues as a result of this transaction will not result in RBMN's becoming a Class II or Class I rail carrier but that its current annual revenues exceed \$5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, RBMN's verified

¹ RBMN states that the portion of the Line between milepost 18 ± at Mauch Chunk Jct. and the end of the line at milepost 19.5 has been out of service and unused for many years.

² Accordingly, this transaction is related to a concurrently filed verified notice of exemption in *C&S Railroad—Lease & Operation Exemption—Reading Blue Mountain & Northern Railroad*, Docket No. FD 36517, by which C&S seeks authority to lease from RBMN and operate the Line.

notice includes a request for waiver of the 60-day advance labor notice requirements. RBMN's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 4, 2021.

All pleadings, referring to Docket No. FD 36516, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on RBMN's representative: Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to RBMN, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 25, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Aretha Laws-Byrum,
Clearance Clerk.

[FR Doc. 2021-11345 Filed 5-27-21; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36517]

C&S Railroad Corporation—Lease and Operation Exemption—Reading Blue Mountain & Northern Railroad Company

C&S Railroad Corporation (C&S), a Class III railroad, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to lease and operate an approximately 19.5-mile rail line being purchased by Reading Blue Mountain & Northern Railroad Company (RBMN) from Carbon County, Pa. (County),¹ extending between milepost 19.5 near Tamenend, Schuylkill County, Pa., and milepost 0.0± at Packerton Jct., Carbon County, Pa. (the Line).²

¹ The acquisition by RBMN from the County is the subject of a separate verified notice filed by RBMN in *Reading Blue Mountain & Northern Railroad—Acquisition Exemption—Carbon County, Pa.*, Docket No. FD 36516.

² C&S states that the portion of the Rail Line between milepost 18 ± at Mauch Chunk Jct. and the

C&S states that it currently leases the Line from the County (through the Carbon County Railroad Commission) and operates it under a modified rail certificate.³ C&S states that when RBMN acquires the Line from the County, C&S's lease with the County will be terminated, and C&S immediately will enter into a new lease with RBMN that will allow C&S to continue to operate the Line.

According to C&S, the proposed lease agreement will not impose or include an interchange commitment. Further, C&S certifies that its projected annual revenue will not exceed \$5 million and will not result in the creation of a Class I or II rail carrier.

The earliest this transaction may be consummated is June 13, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 4, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36517, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on C&S's representative: Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to C&S, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 25, 2021.

end of the line at milepost 19.5 has been out of service and unused for many years. C&S does not currently operate that portion of the Rail Line and does not anticipate doing so under the new lease with RBMN.

³ The modified rail certificate was approved in 1990. *C&S R.R. Modified Rail Certificate*, FD 31618 (ICC served Apr. 18, 1990). Pursuant to 49 CFR 1150.24, a carrier is required to provide notice of termination of service under a modified certificate. C&S should provide its notice of termination of operations under the modified certificate to the appropriate parties and file with the Board in Docket No. FD 31618, and should indicate in its notice that it will continue to provide service pursuant to the authority obtained in this docket. See *D&I R.R.—Acquis. & Operation Exemption—in Lincoln & Union Cntys., S.D., & Lyon, Sioux, & Plymouth Cntys., Iowa*, FD 36497, slip op. at 1 n.2, (STB served Apr. 13, 2021).

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Aretha Laws-Byrum,
Clearance Clerk.

[FR Doc. 2021–11350 Filed 5–27–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36491]

The Cincinnati Railway Company— Modified Rail Certificate

The Cincinnati Railway Company (CNRy) has filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150 subpart C—*Modified Certificate of Public Convenience and Necessity*, to operate a rail line extending approximately 5.6 miles between milepost 1.10 in Lebanon, Ohio, southerly to milepost 6.70 at Hageman Junction, all in Warren County, Ohio (the Line). CNRY states that the Line is owned by the City of Lebanon, Ohio (the City).

CNRY states that the Line previously was owned by the Penn Central Corporation (Penn Central), as successor to the Pennsylvania Railroad System, and that Penn Central sold the Line to the City in 1981. (Notice 4.)¹ CNRY states that the City has engaged various carriers to operate the Line, including the Indiana & Ohio Railway Company (IORY) and its corporate predecessor, the Indiana & Ohio Railroad Company (IOR).²

CNRY and the City have signed an agreement authorizing CNRY to operate the Line until January 28, 2025. CNRY filed a copy of the agreement under seal. (See Notice, Ex. E.)

According to CNRY, the sole connection for the Line is with IORY at Hageman Junction.

The Line qualifies for a modified certificate of public convenience and necessity. See *Common Carrier Status of States, State Agencies & Instrumentalities & Pol. Subdivisions*, FD 28990F (ICC served July 16, 1981); 49 CFR 1150.22.

¹ The verified notice includes evidence of the City's purchase in 1981. (Notice, Ex. D.)

² CNRY states that IORY acquired only an operating interest in the Line and argues that a prior filing by IORY incorrectly indicated that IORY acquired the Line, which left the Board and its predecessor, the Interstate Commerce Commission, with the mistaken impression that IORY owned the line. (Notice 3 & n.7.) See *Ind. & Ohio Ry.—Acquis. & Operation Exemption—Ind. & Ohio R.R.*, FD 30960 (ICC served Feb. 4, 1987) (stating that IORY owned the Line); see also *Ind. & Ohio Ry.—Discontinuance of Serv. Exemption—in Warren Cnty., Ohio*, AB 1297X, slip op. at 1 n.1 (STB served Feb. 28, 2020) (stating that IORY owned the Line).

CNRY states that no subsidy is involved and there are no preconditions that shippers must meet to receive rail service, except those consistent with the Board's general regulation of common carrier service. CNRY also provides information regarding the nature and extent of its liability insurance coverage. See 49 CFR 1150.23(b)(4)-(5).

This notice will be served on the Association of American Railroads (Car Service Division), as agent for all railroads subscribing to the car-service and car-hire agreement, at 425 Third Street SW, Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street NW, Suite 7020, Washington, DC 20001.

Board decisions and notices are available at www.stb.gov.

Decided: May 24, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2021–11303 Filed 5–27–21; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Prairie Du Chien Municipal Airport, Prairie Du Chien, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 0.50 acres (future Parcel 17D) of Clear Zone Easement contained in Parcel 17B to Avigation Easement in exchange for converting 2.94 acres of land currently not controlled by the Airport Sponsor (future Parcel 36) to an Avigation Easement for approach protection. Both Parcel 17B and future Parcel 36 are owned by Crossing Rivers Health Center (and are being sold to a commercial developer) and located adjacent to Prairie du Chien Municipal Airport, Prairie du Chien, WI. The proposed release of 0.50 acres of Clear Zone Easement to Avigation Easement is not in the Runway Protection Zone (RPZ). The release of 0.50 acres from Clear Zone Easement to Avigation Easement is required to allow development on the property that is being sold by the Crossing Rivers Health Center. The conversion from Clear Zone Easement to Avigation Easement will not result in any impact to surfaces protected by Part 77 or airport design surfaces. The Clear

Zone Easement was originally purchased to enable the Airport to ensure airport compatible land use. The proposed future use of 0.50 acres of the land will be a compatible land use.

DATES: Comments must be received on or before June 28, 2021.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Christina Sullivan, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone: (847) 294-8252/Fax: (847) 294-7046 and City of Prairie Du Chien, 37735 US Highway 18, Prairie Du Chien, WI 53821, Telephone: (608)326-2118.

Written comments on the Sponsor's request must be delivered or mailed to: Christina, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, Ste. 320, Des Plaines, IL 60018, Telephone: (847) 294-8252/Fax: (847) 294-7046.

FOR FURTHER INFORMATION CONTACT: Christina Sullivan, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, Ste. 320, Des Plaines, IL 60018, Telephone: (847) 294-8252/Fax: (847) 294-7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The Clear Zone Easement (within Parcel 17B) is owned by the City of Prairie du Chien. The easement was originally purchased to ensure airport compatible development.

Based on current Fair Market Value of Clear Zone Easement (\$8,428) being released and Avigation Easement (\$9,384) being granted to the City of Prairie du Chien in exchange, the net gain to the airport in value of easements is \$956.00.

This notice announces that the FAA is considering the release of the subject airport property at the Prairie du Chien Municipal Airport, Prairie du Chien, WI from federal easement covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Easement Parcel 17D, Part of Airport Parcel 17B (Legal Description), Avigation Easement To Be Converted From Clear Zone Easement, per Proposed Release

Clear Zone Easement located in Farm Lot 43, of the Private Land Claims at Prairie du Chien, City of Prairie du Chien, Crawford County, Wisconsin. Also being part of Lot 1, Crawford County Certified Survey Map Number 237, Document Number 207064 recorded in the Crawford County Register of Deeds Office, described as follows:

Commencing at the Northeast Corner of Farm Lot 43 of the Private Land Claims at Prairie du Chien; thence S79°36'51" W, 975.51 feet along the north line of said Farm Lot 43; thence S0°00'00" W, 1,098.80 feet to a found $\frac{3}{4}$ " iron re-bar at the Northeast Corner of Lot 1, Crawford County Certified Survey Map Number 237; thence S69°31'09" E, along the north line of said Lot 1, 565.40 feet to the northeast corner of said Lot 1, and a found $\frac{3}{4}$ " iron rebar; thence S4°15'28" E, along the east line of said Lot 1, 489.86 feet to a set $\frac{3}{4}$ " iron rebar, said point being the Point of Beginning of this Clear Zone Easement.

Thence continuing S4°15'28" E, along the east line of said Lot 1, 273.84 feet to a found $\frac{3}{4}$ " iron rebar on the westerly line of Lot 2, Crawford County Certified Survey Map Number 1220; thence S4°10'52" E, along the east line of said Lot 1, and the westerly line of said Lot 2, 22.03 feet to a found $\frac{3}{4}$ " iron rebar on the northerly right of way line of U.S.H. 18 and S.T.H. 35; thence N47°15'09" W, along the northerly right of way of U.S.H. 18 and S.T.H. 35, 165.09 feet, to a found $\frac{3}{4}$ " iron rebar; thence N47°17'32" W, along the northerly right of way line of U.S.H. 18 and S.T.H. 35, 51.16 feet, to a set $\frac{3}{4}$ " iron rebar; thence N42°42'28" E, 201.82 feet, to the Point of Beginning.

Containing 0.50 acres more or less.

Issued in Des Plaines, IL, on May 24, 2021.

Debra L. Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2021-11342 Filed 5-27-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2020-0661]

Agency Information Collection

Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules FAR 91 and FAR 107

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 Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information required to process a request for a Minimum Equipment List (MEL) Letter of Authorization (LOA) in accordance with certain regulations prescribing general operating and flight rules. The information to be collected is necessary because a written request is required to obtain an MEL LOA. The information collected includes only those details essential to evaluate the request, approve the MEL, and issue the LOA.

DATES: Written comments should be submitted by June 28, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Attebury by email at: john.h.attebury@faa.gov; phone: 281-443-5862.

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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120-0005.

Title: General Operating and Flight Rules FAR 91 and FAR 107.

Form Numbers: FAA Form 8130-6.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 10, 2020 (85 FR 41669). A person who desires to operate an aircraft with inoperative instruments or equipment under the provisions of 14 CFR 91.213(a) must receive approval for their minimum equipment list and be issued an LOA to use that MEL. The person must submit the MEL for approval along with a written request for an LOA to the responsible Flight Standards office. The information collected includes only those details essential to evaluate the request, approve the MEL, and issue the LOA. This information includes the aircraft operator's name and address, the name and telephone number or email address of the person responsible for aircraft operations, aircraft make, model, series, aircraft registration number, aircraft serial number, the proposed MEL, and nonessential equipment and furnishings list, if applicable.

The FAA currently issues MEL approvals under the provisions of § 91.213(a) through two methods: (1) D095 LOA and (2) D195 LOA. The FAA is simplifying § 91.213(a) MEL approvals by transitioning to one method of approval, LOA D195, and streamlining the application and approval process to reduce regulatory costs, burdens, and delays. While developing this new § 91.213(a) LOA policy, the FAA discovered that approval for information collection was inadvertently overlooked during the § 91.213 rulemaking process. We now seek to remedy that omission.

Additionally, the FAA is revising this collection request to remove sections 14 CFR 91.9 and 91.215(a), as the FAA has determined that those sections do not contain collections covered by the Paperwork Reduction Act.

Respondents: Approximately 2,638 aircraft operators of U.S.-registered aircraft who desire to operate under 14 CFR 91.213(a).

Frequency: One time for the initial request for MEL approval and LOA issuance, and thereafter for MEL revision.

Estimated Average Burden per Response: 20 hours for initial approval; 4 hours for revision.

Estimated Total Annual Burden: We estimate the average annual burden for the first 10 years will be 38,792 hours. Due to implementation of new MEL policy, we anticipate an annual burden of 55,392 hours for the first 5 years and 22,192 hours thereafter, resulting in a 10-year average of 38,792 hours per year. Our rationale follows:

The FAA Aerospace Forecast for Fiscal Years 2020–2040 projects the general aviation fleet to decline slightly, rounded up to an average of 0% change annually. Therefore, we will use the current average of 1308 part 91 MEL LOAs issued per year. Over the past 4 years, 81% of these LOAs were for initial MEL approval and 19% were for MEL revision. We estimate a 20 hour burden for an initial MEL request and a 4 hour burden for an MEL revision. This results in an annual burden of 22,192 hours.

$$1,308 \times 81\% = 1,060; 1,060 \times 20 \text{ hours} = 21,200 \text{ hours}$$

$$1,308 \times 19\% = 248; 248 \times 4 \text{ hours} = 992 \text{ hours}$$

$$21,200 \text{ hours} + 992 \text{ hours} = 22,192 \text{ hours}$$

Additionally, there are 8,300 active D095 LOAs. The new FAA policy will phase out the use of D095 over five years. Holders of D095 LOAs who wish to operate under § 91.213(a) must request D195 LOA issuance. Therefore, on average, for the first 5 years, we anticipate an additional 1,660 MEL LOA requests. These would all be initial MEL requests and result in an additional 33,200 hours each year for the first 5 years.

$$1,660 \times 20 \text{ hours} = 33,200 \text{ hours}$$

Therefore, for the first 5 years, we anticipate an annual burden of 55,392 hours (22,192 + 33,200) and 22,192 hours thereafter, resulting in an average of 38,792 hours per year.

As a result of this addition, and the removal of sections 14 CFR 91.9 and 91.215(a), the FAA estimates that the total annual burden in this Information Collection Request is 282,129 hours and 1,772,836 responses.

Issued in Washington, DC, on May 24, 2021.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2021-11300 Filed 5-27-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act, 5 U.S.C. App.2, that a meeting of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will be held Wednesday, June 23, 2021, via WebEx. The meeting will begin at 3:00 p.m. and end at 5:00 p.m. EDT. The meeting will have an open session from 3:00 p.m. until 3:30 p.m. and a closed session from 3:30 p.m. until 5:00 p.m. EDT.

The purpose of the Board is to provide expert review of the scientific quality, budget, safety and mission-relevance of investigator-initiated research applications submitted for VA merit review consideration and to offer advice for research program officials on program priorities and policies.

The purpose of the open session is to meet with the JBL/CS Service Directors to discuss the overall policies and process for scientific review, as well as disseminate information among the Board members regarding the VA research priorities.

The purpose of the closed session is to provide recommendations on the scientific quality, budget, safety and mission relevance of investigator-initiated research applications submitted for VA merit review evaluation. Applications submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research. The JBL/CS SMRB meeting will be closed to the public for the review, discussion and evaluation of initial and renewal research applications, which involve reference to staff and consultant critiques of research applications. Discussions will deal with scientific merit of each application and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research applications. As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing the subcommittee meetings is in accordance

with Title 5 U.S.C. 552b(c) (6) and (9)(B).

Members of the public who wish to attend the open JBL/CS SMRB meeting should join via WebEx. Meeting number (access code): 199 345 6955. Meeting password: MWmXc8uc5@7. Meeting link: <https://veteransaffairs.webex.com/webappng/sites/veteransaffairs/j.php?MTID=m93c418ac38f1765a68bde6e4cf5a055b>.

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Michael Burgio, Ph.D., Designated Federal Officer (14RD) Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202-603-4667 or Michael.Burgio@va.gov.

Dated: May 25, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021-11377 Filed 5-27-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, “VA Employee Whole Health Program Records-VA.”.

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new 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 “VA Employee Whole Health Program Records-VA” (199VA10). Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT:

Stephanie Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245-2492 (Note: not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health program to promote and maintain the physical and mental fitness of employees under their jurisdiction. VA Employee Whole Health Program Records will house records of employees engaging in whole health classes, education, coaching, and other approaches in support of their individual health and wellbeing. These records will be maintained separately from the employee medical file for the privacy of the employee as the Employee Whole Health Program records are not for documenting fitness for duty, job and/or hazard exposure or medical treatment for work-related injuries. The new system of records outlines an additional category of records to document and track employees, not previously documented, namely records resulting from participation in agency-sponsored whole health self-care and wellness activities, including health assessments, personal health planning, health coaching, preventive services, fitness programs, and any other activities that could be considered part of a comprehensive worksite whole health and wellness program. The new system of records will allow documentation of program participation, will allow workload to be captured, and will enable program evaluation to assess effectiveness overall and on individual wellbeing.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information maintained in the system.

1. VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the

record. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when: (a) VA or any component thereof; (b) Any VA employee in his or her official capacity; (c) Any VA employee in his or her 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, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an order from a court of competent jurisdiction under 552a(b)(11).

5. VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701. If the disclosure is in response to a request from a law enforcement entity, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7).

6. VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

9. VA may disclose information to the Federal Labor Relations Authority (FLRA) 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. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

10. VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel 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 authorized by law. VA must be able to provide information to MSPB and the Office of the Special Counsel to assist it in fulfilling its duties as required by statute and regulation.

11. VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

12. VA may disclose health care information to a non-VA health care provider, such as the Department of Defense and the Department of Health and Human Services, for the purpose of treating any VA patient, including Veterans. To better facilitate medical care and treatment for patients, VA must be prepared to share health information between VHA and other health care organizations.

13. VA may disclose name(s) and address(es) of present or former members of the armed services and/or their dependents under certain circumstances: (a) To any nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, or (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency, or instrumentality has made a written request for such name(s) or address(es) for a purpose authorized by law, provided that the records will not be used for any purpose other than that stated in the request and that the organization, agency, or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to VA, or to disclose information as required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 110 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. VHA may not disclose individually identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by HHS' Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this new system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule, before VHA may disclose the covered information.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, 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. Dominic A. Cussatt, Acting Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on April 20, 2021 for publication.

Dated: May 25, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

VA Employee Whole Health Program Records-VA (199VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

These records are located at VA facilities (see Appendix 1) and at other Federal, state, or local government or private sector agencies or institutions which have agreements with VA to provide designated whole health self-care and wellness services to VA employees.

SYSTEM MANAGER(S):

Executive Director, Office of Patient Centered Care and Cultural Transformation, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 773-820-2387 (this is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE(S) OF THE SYSTEM:

The records will be used for the purpose of evaluating the effectiveness of whole health self-care and wellness programs for employees. The records are used for documentation of program participation, will allow workload to be captured, and will enable program evaluation to assess effectiveness overall and on individual wellbeing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records may include information on current or former VA employees, contractors, and volunteers, who have participated in designated whole health self-care and wellness activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from participation in agency-sponsored whole health self-care and wellness activities, including demographics (name, date of birth, race/ethnicity, and gender), health assessments (lifestyle behaviors—exercise, eating habits, tobacco use; emotional health—mood, stress, life events; and physical health—weight, blood pressure, cholesterol levels), personal health planning, health coaching, preventive services, fitness programs, and any other activities that could be considered part of a

comprehensive worksite self-care and wellness program.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided from the individual to whom the records pertain, agency whole health or employee whole health staff, and other providers of self-care and wellness activities designated to provide services to VA employees.

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 disclosure authority in both 38 U.S.C. 7332 and 45 CFR parts 160 and 164.

1. VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national

security, resulting from a suspected or confirmed breach.

4. VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when: (a) VA or any component thereof; (b) Any VA employee in his or her official capacity; (c) Any VA employee in his or her 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, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an order from a court of competent jurisdiction under 552a(b)(11).

5. VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701. If the disclosure is in response to a request from a law enforcement entity, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7).

6. VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. VA may disclose information to the Federal Labor Relations Authority (FLRA) 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.

10. VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel 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 authorized by law.

11. VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. VA may disclose health care information to a non-VA health care provider, such as the Department of Defense and the Department of Health and Human Services, for the purpose of treating any VA patient, including Veterans.

13. VA may disclose name(s) and address(es) of present or former members of the armed services and/or their dependents under certain circumstances: (a) To any nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, or (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency, or instrumentality has made a written request for such name(s) or address(es) for a purpose authorized by law, provided that the records will not be used for any purpose other than that stated in the request and that the organization, agency, or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained on paper documents in file folders and in electronic records systems at VA facilities and at other Federal, state, or local government or private sector agencies or institutions which have agreements with VA to provide designated whole health self-care and wellness services to VA employees.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the employee's name, date of birth, Social Security number, or any combination of those identifiers. Records may also be retrieved by other unique identifiers such as type of whole health self-care and wellness service.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained and destroyed in accordance with the VA Records Control Schedule, RCS 10–1, 3015.8. When permitted by VA policy, the destruction of records will take place in the following manner: Temporary, destroy 3 years after the project/activity/or transaction is completed or superseded, but longer retention is authorized if needed for business use (DAA–GRS–2017–0010–0013, item 080).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to VA or contractor officials with a bona fide need for access to the records. Strict control measures are enforced to ensure that access to and disclosure from these records are limited to a "need-to-know basis." Access to computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the electronic records system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed

in the performance of their official duties.

RECORD ACCESS PROCEDURES:

Individuals requesting access to and contesting the contents of records must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) Social Security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature. Individuals will submit the request to either the Employee Whole Health Coordinator or the Whole Health Program Manager at a VA facility, dependent upon staffing at the local facility.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below:

a. Current employees. Current employees should contact either the Employee Whole Health Coordinator or the Whole Health Program Manager at a VA facility, dependent upon staffing at the local facility at which they are employed. Individuals must furnish such identifying information as required by VA for their records to be located and identified.

b. Former employees. Former employees should contact either the Employee Whole Health Coordinator or the Whole Health Program Manager at a VA facility, dependent upon staffing at the local facility at which they were employed. Individuals submitting requests must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) Social Security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–11316 Filed 5–27–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Agency Information Collection Activity Under OMB Review: Report of Medical, Legal and Other Expenses Incident to Recovery for Injury or Death

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900–0545”.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0545” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C 1503; 38 CFR 3.262, 3.271, 3.272.

Title: Report of Medical, Legal and Other Expenses Incident to Recovery for Injury or Death (VA Form 21P–8416b).

OMB Control Number: 2900–0545.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant’s eligibility for needs-based pension programs are determined in part by countable family income and certain deductible expenses. When a claimant is awarded compensation by another entity or government agency based on personal injury or death, the compensation is usually countable income for VA purposes (38 CFR 3.262(i)). However, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of

compensation, may be deducted from the amount of the award or settlement (38 CFR 3.271(g) and 3.272(g)). In these situations, VBA uses VA Form 21P–8416b *Report of Medical, Legal and Other Expenses Incident to Recovery for Injury or Death*, to gather information that is necessary to determine eligibility for income-based benefits and the rate payable; without this information, determination of eligibility would not be possible. In an effort to safeguard Veterans and their beneficiaries from financial exploitation, the instructions on VA Form 21P–8416b were amended to include information regarding VA-accredited attorneys or agents charging fees in connection with a proceeding before the Department of Veterans Affairs with respect to a claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 17, 2021, page 14686.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 1,500.

By direction of the Secretary.

Dorothy Glasgow,

(Alternate) VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–11372 Filed 5–27–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Asset and Infrastructure Review (AIR) Commission Foreword and Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Final Action

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is required to develop criteria that will be used in making recommendations regarding the modernization or realignment of Veterans Health Administration (VHA) facilities. This notice provides the required final selection criteria.

FOR FURTHER INFORMATION CONTACT: Valerie Mattison Brown, Chief Strategy

Officer, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7100.

SUPPLEMENTARY INFORMATION: Subtitle A of Title II of the Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (Pub. L. 115–182), requires VA to develop criteria that will be used to assess and make recommendations regarding the modernization or realignment of Veterans Health Administration (VHA) facilities (“Selection Criteria”). In 2019, VHA began working with various stakeholders and experts to identify factors to consider in developing the criteria. VHA solicited feedback from Veterans Service Organizations (VSOs), Community Veteran Engagement Boards (CVEBs) and a wide range of interdisciplinary VA leaders. Six criteria and associated sub-criteria were developed through these engagements. VA will use these criteria to evaluate potential market opportunities for submission to the statutorily mandated Asset and Infrastructure Review (AIR) Commission.

On February 2, 2021, VA published a **Federal Register** Notice (FRN), requesting public comment on the draft Selection Criteria as required by Section 203 of the MISSION Act (86 FR 7921). The public comment period closed on May 1, 2021. VA received a total of 122 comments on the FRN from Veterans, caregivers, VSOs, legislative partners, research partners, business partners, and other stakeholders. Of the 122 comments, 31 comments specifically referenced the draft Section Criteria, and 14 out of those 31 comments recommended specific changes or considerations be applied to the draft Section Criteria. These 14 comments were further reviewed and considered by VA for inclusion into the final Section Criteria.

The FRN comments are publicly available online at www.regulations.gov. Copies of the comments are also available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (exception holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

Foreword

The Department of Veterans Affairs (“VA”) is honored to deliver exceptional health care and services to more than 9 million Veterans. As we look to the future, VA remains committed to a core set of immutable

values that empower, strengthen, and encourage a vibrant and healthy Veteran community. At the forefront of every decision VA makes is a commitment to serving as an integrated system to provide coordinated, lifelong, world-class health care and services that leverage cutting-edge research and equitable access to the Nation's top academic and medical professionals. VA's vision is built on a foundation of inclusion, honor, and respect for every Veteran's unique experience. As VA transforms to optimize resources and modernize infrastructure and systems, the Department will remain committed to its role as the primary provider and coordinator of Veteran care. By expanding our work with communities, caregivers, and strategic partners VA will achieve outcomes that empower Veterans for generations to come.

As the unprecedented COVID-19 public health crisis consumed the Nation and the globe, VA rose to the challenge, demonstrating the strength of our nationwide, integrated system, and solidifying our position at the leading edge of U.S. health care on behalf of those we serve. We employed each of our four health-related missions—health care, education, research, and emergency response—to lead the Nation forward beside our interagency and strategic partners. As demonstrated during the pandemic, these missions complement one another and together are vital elements of a complete VA transformation vision. Many U.S. healthcare leaders expect that health care delivery trends post-pandemic will incorporate adaptations that worked well for many patients, including Veterans. In particular, a national survey of U.S. adults reported that 3 in 10 had at least one virtual visit during the pandemic.¹ VA recognizes that a 'new normal' with more virtual options for care and services may have significant implications for the way future health care delivery systems are designed. VA intends to stay at the leading edge of this type of person-centered innovation, employing the full complement of our core missions.

As Veteran needs, preferences, and demographics shift over the coming decades, VA's top priority will be to design an integrated system of care and benefits that is outcomes-based, and values-driven. As an integrated system, VA will ensure reliable access to meaningful care coordination that includes expanding availability of

digital health care services and maintaining capacity to serve as the backstop to the national health care system. VA will strengthen its partnerships with a growing network of public and private-sector allies and strive to lead the nation in Veteran-relevant research and innovation. At every turn, VA will remain committed to evidence-based policymaking and effective governance that always puts the Veteran first.

In line with VA's vision, VA submits the following set of Selection Criteria for making recommendations regarding the modernization or realignment of VHA facilities as required by Section 203 of the MISSION Act of 2018. The Selection Criteria are designed to keep Veterans' needs at the center of the decision-making process, assuring that each Veteran can receive the integrated care they have earned and deserve.

Criteria

VA's vision for the future of VA health care is an integrated system that honors America's Veterans by providing lifelong, world-class care and benefits, while leveraging cutting-edge research and equitable access to the Nation's top health, academic, and research professionals. The market assessments required by Section 203 of the MISSION Act of 2018 were designed and being conducted in support of this vision. The assessments provide VA with the ability to plan for the continuing evolution of Veteran health care, incorporating major trends and events in the national and global health ecosystem (e.g., the COVID-19 pandemic and telehealth). Each assessment will identify strategic opportunities to position VA to increase health care access points in locations where the demand for VA health care services is not being met, enhance Veteran experience, account for social determinants,² consider health equity factors³ and serve as the coordinator of Veteran health care and services. Through thoughtful and constructive engagements with internal and external stakeholders, the following criteria were developed to ensure opportunities

² Social determinants as defined by the Department of Health and Human Services (HHS)—are "conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks." Link: <https://www.hrsa.gov/about/organization/bureaus/ohe/index.html>.

³ Health equity as defined by HHS—is "the absence of disparities or avoidable differences among socioeconomic and demographic groups or geographical areas in health status and health outcomes such as disease, disability, or mortality. Link: <https://www.hrsa.gov/about/organization/bureaus/ohe/index.html>.

identified for VA Market⁴ recommendations⁵ support VA's goal in designing high performing integrated networks through VHA realignment and modernization opportunities.

The Secretary will use the Selection Criteria to make recommendations to the AIR Commission regarding the modernization and realignment of VHA facilities. Recommendations submitted to the AIR Commission will focus on creating Veteran-centric outcomes that maintain or improve health care services through the most equitable modalities and at locations that are most beneficial to those VA serves. The recommendations will then go through the AIR Commission review process as outlined in the MISSION Act.

The Selection Criteria are broken out into six domains, each of which complement the others. The ordering of the domains follows as they appear in the MISSION Act legislation. Each criterion begins with a commitment statement, outlining VA's philosophy and commitment to current and future Veterans, followed by the criterion statement, sub-criteria, and explanatory statement:

Veterans' Need for Care & Services and the Market's Capacity To Provide Them (Demand)

Commitment Statement: VA is committed to providing Veterans the full range of integrated care and services needed and desired throughout their lifetime, to include preventive, acute and chronic care. These services will be carefully balanced to meet Veterans' needs and preferences with the capacity available through VA's direct care system, our Community Care Network (CCN), and government, academic, and other strategic partners. VA intends to ensure Veterans receive the personalized care they have earned. VA will do this by matching the services and support Veterans may need with VA's ability to provide those services in a timely manner.

Demand Criterion: The recommendation aligns VA's high performing integrated network resources to effectively meet the future health care demand of the Veteran enrollee population with the capacity in the Market.

Demand Sub-Criteria: The recommendation:

⁴ A VA Market is comprised of VA owned and/or operated facilities, as well as Department of Defense (DoD), Tribal, other federal agency, academic affiliates, and other community partners.

⁵ A VA Market recommendation is comprised of multifaceted, interdependent strategic opportunities across the continuum of care within a Market.

¹ Link to survey: https://www.urban.org/sites/default/files/publication/103457/one-in-three-adults-used-telehealth-during-the-first-six-months-of-the-pandemic-but-unmet-needs-for-care-persisted_1.pdf.

- Aligns the quality and delivery of integrated care and services with projected Veteran demand across demographics and geography;
- Retains or improves VA's ability to meet projected demand; and
- Incorporates trends in the evolution of U.S. health care.

When applying the demand criterion, VA will consider how a recommendation will impact VA's ability to meet the needs of Veterans in the future. An assessment of the existing health services available in the Market will aide in determining market adjustments. VA will consider what Veterans may need through understanding of the services that Veterans have accessed in the past and are projected to need and prefer in the future. VA will also consider how and where Veterans wish to receive services, including in ambulatory settings, hospitals, in the community, through telehealth, and through innovative models and modalities.

Accessibility of Care for Veterans (Access)

Commitment Statement: VA intends to provide Veterans with an accessible, whole health experience, with services thoughtfully designed to meet their needs. VA will do this by making the services and support Veterans need accessible through locations, models, and modalities that most benefit them and match their needs and preferences.

Access Criterion: The recommendation maintains or improves Veteran access to care.

Access Sub-Criteria:

The recommendation:

- Aligns VA points of care and services with projected Veteran need across demographics and geography;
- Ensures Veterans are provided a range of integrated health care options and the opportunity to choose the care they trust throughout their lifetime;
- Enables VA to serve as the coordinator of each Veteran's health care, whether provided within or beyond VA;
- Considers health equity, defined as the absence of disparities or avoidable differences among socioeconomic and demographic groups or geographical areas in health status and health outcomes such as disease, disability, or mortality;
- Reflects consideration of factors underpinning observed access patterns regarding conditions in the environment in which people are born, live, learn, work, play, worship, and age that affect a wide range of health functioning, and quality-of-life outcomes and risks; and

- Incorporates trends in the evolution of U.S. health care.

When applying the 'access' criterion, VA will consider how a recommendation will impact the convenience and experience of care provided to Veterans in the future. Key components of access include the time it takes to receive care in the VA system and in the community and the barriers and accelerators to receiving care, such as distance or availability of technology or availability of culturally competent experience in the community.

Impact on Mission

Commitment Statement: VA is committed to delivering best-in-class care throughout Veterans' lifetimes. This means positioning VA health care system at the leading edge of the health care industry in education, research, and national emergency preparedness.

Impact on Mission Criterion: The recommendation provides for VA's second, third, and fourth health related statutory missions of education, research, and emergency preparedness.

Impact on Mission Sub-Criteria:

The recommendation:

- Aligns resources to VA's education, research, and emergency preparedness missions across demographics and geography;
- **Education:**⁶ Maintains or enhances VA's ability to execute its education mission;
- **Research:**⁷ Maintains or enhances VA's ability to execute its research mission;
- **Emergency⁸ Preparedness:** Maintains or enhances VA's ability to execute its emergency preparedness mission; and
- Incorporates trends in the evolution of U.S. health care.

The 'impact on mission' criterion allows VA to consider how a recommendation will impact VA's ability to execute our statutory missions of education, research, and emergency preparedness in support of Veterans and the Nation.

⁶ VA's education mission has a profound impact on VA's human capital requirements as well as the future healthcare workforce (70% of US physicians received some training in a VA health care facility).

⁷ VA's research mission is grounded in care delivery to Veterans and focuses on health issues that affect Veterans.

⁸ VA's strong emergency preparedness mission has provided broad support to Veterans and focuses on health issues that affect Veterans. Nation during multiple public health emergencies, including but not limited to COVID (e.g., for Hurricane Maria VA was THE source of 'boots on the ground' for all relief efforts).

Providing the Highest Quality Whole Health Care (Quality)

Commitment Statement: VA is committed to providing Veterans with a high-quality, whole health care system that delivers an excellent experience of care and optimal health outcomes. VA will deliver the same high quality, evidence-based standards of care regardless of where, or by which modality, their care is received.

Quality Criterion: The recommendation considers the quality and delivery of health care services available to Veterans, including the experience, safety, and appropriateness of care.

Quality Sub-Criteria:

The recommendation:

- Ensures the highest possible quality of care across demographics and geography;
- Promotes recruitment of top clinical and non-clinical talent;
- Maintains or enhances Veteran experience; and
- Incorporates trends in the evolution of U.S. health care.

When applying the 'quality' criterion, VA will consider how a recommendation will impact the quality of care for Veterans. Quality in health care is measured through metrics and ratings assessed by federal and commercial health care entities. VA will consider the care needs and preferences of Veterans in order to provide optimal experience, safety, and outcomes.

Effective Use of Resources for Veteran Care (Cost Effectiveness)

Commitment Statement: VA is committed to optimizing the Veteran health care system through the effective and sustainable use and sharing of taxpayer resources, including staffing, space, infrastructure, and funding, with the goal of providing Veterans with the best health care and outcomes. VA will actively and mindfully manage resources, allowing VA to provide services and support that effectively match Veterans' needs and preferences while putting their health and empowerment at the center of system design.

Cost Effectiveness Criterion: The recommendation provides a cost-effective means by which to provide Veterans with modern health care.

Cost Effectiveness Sub-Criteria:

The recommendation:

- Reflects stewardship of taxpayer dollars by optimizing investments and resources to achieve advancements in access and outcomes for Veterans;
- Recognizes potential savings or efficiencies that may free resources for

more impactful investment for Veterans; and

○ Considers the value of Veteran and employee experience, innovation, and other intangible elements of value.

When applying the ‘cost effectiveness’ criterion, VA will consider whether a recommendation optimizes funding for Veteran care.

Ensuring a Safe and Welcoming Health Care Environment of Care (Sustainability)

Commitment Statement: VA is committed to providing Veterans a safe and welcoming health care environment. Our goal is for Veterans to feel safe physically, mentally, socially, and emotionally when receiving care with access to a full range of experts and specialists. VA is committed to providing standard and complementary types of care for our unique Veteran

population in an equitable and inclusive environment. VA will do this by ensuring points of care are modern and inviting, with an expert workforce and care options designed to meet Veterans where they are in their health journey.

Sustainability Criterion: The recommendation creates a sustainable health care delivery system for Veterans.

Sustainability Sub-Criteria:

The recommendation:

- Aligns investment in care and services with projected Veteran care needs across demographics and geography;
- Reflects stewardship of taxpayer dollars by creating a sustainable infrastructure system for Veterans;
- Enables recruitment and retention of top clinical and non-clinical talent; and
- Incorporates trends in the evolution of U.S. health care.

When applying the ‘sustainability’ criterion, VA will consider how a

recommendation impacts our ability to offer Veterans a welcoming and safe care environment that meets modern health care standards and ensures sustainability for future generations of Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 25, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2021–11398 Filed 5–27–21; 8:45 am]

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Part II

Department of Homeland Security

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers; Notice

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of intent to distribute offset for Fiscal Year 2021.

SUMMARY: Pursuant to the *Continued Dumping and Subsidy Offset Act of 2000*, this document is U.S. Customs and Border Protection's (CBP) notice of intent to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2021 in connection with countervailing duty orders, antidumping duty orders, or findings under the *Antidumping Act of 1921*. This document provides the instructions for affected domestic producers, or anyone alleging eligibility to receive a distribution, to file certifications to claim a distribution in relation to the listed orders or findings.

DATES: Certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by July 27, 2021. Any certification received after July 27, 2021 will be summarily denied, making claimants ineligible for the distribution.

ADDRESSES: Certifications and any other correspondence (whether by mail, or an express or courier service) must be addressed to U.S. Customs and Border Protection, Revenue Division, Attention: CDSOA Team, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278.

FOR FURTHER INFORMATION CONTACT: Sean Wuethrich, CDSOA Team, Revenue Division, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278; telephone (317) 614-4462.

SUPPLEMENTARY INFORMATION:

Background

The *Continued Dumping and Subsidy Offset Act of 2000* (CDSOA) was enacted on October 28, 2000, as part of the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001* (the "Act"). The provisions of the CDSOA are contained in title X (sections 1001-1003) of the Appendix of the Act (H.R. 5426).

The CDSOA amended title VII of the *Tariff Act of 1930* by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing

duty order, an antidumping duty order, or a finding under the *Antidumping Act of 1921* will be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) who:

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping duty order, a finding under the *Antidumping Act of 1921*, or a countervailing duty order has been entered;

(B) Remains in operation continuing to produce the product covered by the countervailing duty order, the antidumping duty order, or the finding under the *Antidumping Act of 1921*; and

(C) Has not been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding (e.g., opposed the petition or otherwise presented evidence in opposition to the petition). The distribution that these parties may receive is known as the continued dumping and subsidy offset.

Section 7601(a) of the *Deficit Reduction Act of 2005* repealed 19 U.S.C. 1675c. According to section 7701 of the *Deficit Reduction Act*, the repeal takes effect as if enacted on October 1, 2005. However, section 7601(b) provides that all duties collected on an entry filed before October 1, 2007, must be distributed as if 19 U.S.C. 1675c had not been repealed by section 7601(a). The funds available for distribution were also affected by section 822 of the *Claims Resolution Act of 2010* and section 504 of the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*.

Historically, the antidumping and countervailing duties assessed and received by CBP on CDSOA-subject entries, along with the interest assessed and received on those duties pursuant to 19 U.S.C. 1677g, were transferred to the CDSOA Special Account for distribution. 66 FR 48546, Sept. 21, 2001; see also 19 CFR 159.64(e). Other types of interest, including delinquency interest that accrued pursuant to 19 U.S.C. 1505(d), equitable interest under common law, and interest under 19 U.S.C. 580, were not subject to distribution. *Id.*

Section 605 of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA) (Pub. L. 114-125, February 24,

2016; codified as 19 U.S.C. 4401), provided new authority for CBP to deposit into the CDSOA Special Account for distribution delinquency interest that accrued pursuant to 19 U.S.C. 1505(d), equitable interest under common law, and interest under 19 U.S.C. 580 for all surety payments received by CBP on or after October 1, 2014, on CDSOA subject entries, as well as post-judgment interest received by CBP on those surety payments. See 28 U.S.C. 1961.

On February 10, 2020, President Trump ordered the sequester of non-exempt budgetary resources for Fiscal Year 2021 pursuant to section 251A of the *Balanced Budget and Emergency Deficit Control Act of 1985*, as amended (85 FR 8129, February 13, 2020). To implement this sequester during Fiscal Year 2021, the calculation of the Office of Management and Budget (OMB) requires a reduction of 5.7 percent of the assessed duties and interest received in the CDSOA Special Account (account number 015-12-5688). OMB has concluded that any amounts sequestered in the CDSOA Special Account during Fiscal Year 2021 will become available in the subsequent fiscal year. See 2 U.S.C. 906(k)(6). As a result, CBP intends to include the funds that are temporarily reduced via sequester during Fiscal Year 2021 in the continued dumping and subsidy offset for Fiscal Year 2021, which will be distributed not later than 60 days after the first day of Fiscal Year 2022 in accordance with 19 U.S.C. 1675c(c). In other words, the continued dumping and subsidy offset that affected domestic producers receive for Fiscal Year 2021 will include the funds that were temporarily sequestered during Fiscal Year 2021.

Because of the statutory constraints in the assessments of antidumping and countervailing duties, as well as the additional time involved when the Government must initiate litigation to collect delinquent antidumping and countervailing duties, the CDSOA distribution process will be continued for an undetermined period. Consequently, the full impact of the CDSOA repeal on amounts available for distribution has been delayed for several years. It should also be noted that amounts distributed may be subject to recovery as a result of reliquidations, court actions, administrative errors, and other reasons.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward

to CBP a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding. In this regard, it is noted that the USITC has supplied CBP with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case who are potentially eligible to receive an offset. This list appears at the end of this document.

A significant amount of litigation has challenged various provisions of the CDSOA, including the definition of the term “affected domestic producer.” In two decisions, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) upheld the constitutionality of the support requirement contained in the CDSOA. Specifically, in *SKF USA Inc. v. United States Customs & Border Prot.*, 556 F.3d 1337 (Fed. Cir. 2009), the Federal Circuit held that the CDSOA’s support requirement did not violate either the First or Fifth Amendment. The Supreme Court of the United States denied plaintiff’s petition for certiorari, *SKF USA, Inc. v. United States Customs & Border Prot.*, 560 U.S. 903 (2010). Similarly, in *PS Chez Sidney, L.L.C. v. United States*, 409 Fed. Appx. 327 (Fed. Cir. 2010), the Federal Circuit summarily reversed the U.S. Court of International Trade’s judgment that the support requirement was unconstitutional, allowing only plaintiff’s non-constitutional claims to go forward. *See PS Chez Sidney, L.L.C. v. United States*, 684 F.3d 1374 (Fed. Cir. 2012). Furthermore, in two cases interpreting the CDSOA’s language, the Federal Circuit concluded that a producer who never indicates support for a dumping petition by letter or through questionnaire response, despite the act of otherwise filling out a questionnaire, cannot be an affected domestic producer. *Ashley Furniture Indus., Inc. et al. v. United States*, 734 F.3d 1306 (Fed. Cir. 2013), *cert. denied*, 135 S. Ct. 72 (2014); *Giorgio Foods, Inc. v. United States et al.*, 785 F.3d 595 (Fed. Cir. 2015).

Domestic producers who are not on the USITC list but believe they nonetheless are eligible for a CDSOA distribution under one or more antidumping and/or countervailing duty cases are required, as are all potential claimants that expressly appear on the list, to properly file their certification(s) within 60 days after this notice is published. Such domestic producers must allege all other bases for eligibility in their certification(s). CBP will evaluate the merits of such claims in accordance with the relevant statutes, regulations, and decisions. Certifications that are not timely filed

within the requisite 60 days and/or that fail to sufficiently establish a basis for eligibility will be summarily denied. Additionally, CBP may not make a final decision regarding a claimant’s eligibility to receive funds until certain legal issues which may affect that claimant’s eligibility are resolved. In these instances, CBP may withhold an amount of funds corresponding to the claimant’s alleged *pro rata* share of funds from distribution pending the resolution of those legal issues.

It should also be noted that the Federal Circuit ruled in *Canadian Lumber Trade Alliance v. United States*, 517 F.3d 1319 (Fed. Cir. 2008), *cert. denied sub nom. United States Steel v. Canadian Lumber Trade Alliance*, 129 S. Ct. 344 (2008), that CBP was not authorized to distribute such antidumping and countervailing duties to the extent they were derived from goods from countries that are parties to the North American Free Trade Agreement (NAFTA). Due to this decision, CBP does not list cases related to NAFTA on the Preliminary Amounts Available report, and no distributions will be issued on these cases.

Regulations Implementing the CDSOA

It is noted that CBP published Treasury Decision (T.D.) 01–68 (Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers) in the **Federal Register** (66 FR 48546) on September 21, 2001, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of title 19, Code of Federal Regulations (19 CFR part 159, subpart F (sections 159.61–159.64)). More specific guidance regarding the filing of certifications is provided in this notice in order to aid affected domestic producers and other domestic producers alleging eligibility (“claimants” or “domestic producers”).

Notice of Intent To Distribute Offset

This document announces that CBP intends to distribute to affected domestic producers the assessed antidumping or countervailing duties, section 1677g interest, and interest provided for in 19 U.S.C. 4401 that are available for distribution in Fiscal Year 2021 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. All distributions will be issued by paper check to the address provided by the claimants. Section 159.62(a) of title 19, Code of Federal Regulations (19 CFR 159.62(a)) provides that CBP will publish such a notice of intention to

distribute at least 90 calendar days before the end of a fiscal year. Failure to publish the notice at least 90 calendar days before the end of the fiscal year will not affect an affected domestic producer’s obligation to file a timely certification within 60 days after the notice is published. *See Dixon Ticonderoga v. United States*, 468 F.3d 1353, 1354 (Fed. Cir. 2006).

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding (including any distribution under 19 U.S.C. 4401), an affected domestic producer (and anyone alleging eligibility to receive a distribution) must submit a certification for each order or finding under which a distribution is sought, to CBP, indicating its desire to receive a distribution. To be eligible to obtain a distribution, certifications must be received by CBP no later than 60 calendar days after the date of publication of this notice of intent to distribute in the **Federal Register**. All certifications not received by the 60th day will not be eligible to receive a distribution.

As required by 19 CFR 159.62(b), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under section 159.63 to claim a distribution. Section 159.62(b) also provides that the dollar amounts subject to distribution that are contained in the Special Account for each listed order or finding are to appear in this notice. However, these dollar amounts were not available in time for inclusion in this publication. The preliminary amounts will be posted on the CBP website (<https://www.cbp.gov>). However, the final amounts available for disbursement may be higher or lower than the preliminary amounts.

CBP will provide general information to claimants regarding the preparation of certification(s). However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and accurate so as to demonstrate the eligibility of the domestic producer for the distribution requested. Failure to ensure that the certification is correct, complete, and accurate as provided in this notice will result in the domestic producer not receiving a distribution and/or a demand for the return of funds.

Specifically, to obtain a distribution of the offset under a given order or finding (including any distribution under 19 U.S.C. 4401), each potential claimant must timely submit a certification containing the required

information detailed below as to the eligibility of the domestic producer (or anyone alleging eligibility) to receive the requested distribution and the total amount of the distribution that the domestic producer is claiming. Certifications should be submitted to U.S. Customs and Border Protection, Revenue Division, Attention: CDSOA Team, 6650 Telecom Drive, Suite 100, Indianapolis, IN, 46278. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer or allege another basis for eligibility. Any false statements made in connection with certifications submitted to CBP may give rise to liability under the *False Claims Act* (see 31 U.S.C. 3729–3733) and/or to criminal prosecution.

A successor to a company that was an affected domestic producer at the time of acquisition should consult 19 CFR 159.61(b)(1)(i). Any company that files a certification claiming to be the successor company to an affected domestic producer will be deemed to have consented to joint and several liability for the return of any overpayments arising under 19 CFR 159.64(b)(3) that were previously paid to the predecessor. CBP may require the successor company to provide documents to support its eligibility to receive a distribution as set out in 19 CFR 159.63(d). Additionally, any individual or company who purchases any portion of the operating assets of an affected domestic producer, a successor to an affected domestic producer, or an entity that otherwise previously received distributions may be jointly and severally liable for the return of any overpayments arising under 19 CFR 159.64(b)(3) that were previously paid to the entity from which the operating assets were purchased or its predecessor, regardless of whether the purchasing individual or company is deemed a successor company for purposes of receiving distributions.

A member company (or its successor) of an association that appears on the list of affected domestic producers in this notice, where the member company itself does not appear on this list, should consult 19 CFR 159.61(b)(1)(ii). Specifically, for a certification under 19 CFR 159.61(b)(1)(ii), the claimant must name the association of which it is a member, specifically establish that it was a member of the association at the time the association filed the petition with the USITC, and establish that the

claimant is a current member of the association.

In order to promote accurate filings and more efficiently process the distributions, we offer the following guidance:

- If claimants are members of an association but the association does not file on their behalf, the association will need to provide its members with a statement that contains notarized company-specific information including dates of membership and an original signature from an authorized representative of the association.
- An association filing a certification on behalf of a member must also provide a power of attorney or other evidence of legal authorization from each of the domestic producers it is representing.
- Any association filing a certification on behalf of a member is responsible for verifying the legal sufficiency and accuracy of the member's financial records, which support the claim, and is responsible for that certification. As such, an association filing a certification on behalf of a member is jointly and severally liable with the member for repayment of any claim found to have been paid or overpaid in error.

The association may file a certification in its own right to claim an offset for that order or finding, but its qualifying expenditures would be limited to those expenditures that the association itself has incurred after the date of the order or finding in connection with the particular case.

As provided in 19 CFR 159.63(a), certifications to obtain a distribution of an offset (including any distribution under 19 U.S.C. 4401) must be received by CBP no later than 60 calendar days after the date of publication of the notice of intent in the **Federal Register**. All certifications received after the 60-day deadline will be summarily denied, making claimants ineligible for the distribution regardless of whether or not they appeared on the USITC list.

A list of all certifications received will be published on the CBP website (<https://www.cbp.gov>) shortly after the receipt deadline. This publication will not confirm acceptance or validity of the certification, but merely receipt of the certification. Due to the high volume of certifications, CBP is unable to respond to individual telephone or written inquiries regarding the status of a certification appearing on the list.

While there is no required format for a certification, CBP has developed a standard certification form to aid claimants in filing certifications. The certification form is available at <https://www.pay.gov> under the Public Form

Name “Continued Dumping and Subsidy Offset Act of 2000 Certification” (CBP Form Number 7401) or by directing a web browser to <https://www.pay.gov/public/form/start/8776895/>. The certification form can be submitted electronically through <https://www.pay.gov> or by mail. All certifications not submitted electronically must include original signatures.

Regardless of the format for a certification, per 19 CFR 159.63(b), the certification must contain the following information:

- (1) The date of this **Federal Register** notice;
- (2) The Department of Commerce antidumping or countervailing duty case number (for example, A–331–802);
- (3) The case name (product/country);
- (4) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
- (5) The mailing address of the domestic producer (if a post office box, the physical street address must also appear) including, if applicable, a specific room number or department;
- (6) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
- (7) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
- (8) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s), mailing address, and, if available, facsimile transmission number(s) and electronic mail (email) address(es) for the person(s). Correspondence from CBP may be directed to the designated contact(s) by either mail or phone or both;
- (9) The total dollar amount claimed;
- (10) The dollar amount claimed by category, as described in the section below entitled “Amount Claimed for Distribution”;
- (11) A statement of eligibility, as described in the section below entitled “Eligibility to Receive Distribution”; and
- (12) For certifications not submitted electronically through <https://www.pay.gov>, an original signature by an individual legally authorized to bind the producer.

Qualifying Expenditures That May Be Claimed for Distribution

Qualifying expenditures that may be offset under the CDSOA encompass

those expenditures incurred by the domestic producer after issuance of an antidumping duty order or finding or a countervailing duty order (including expenditures incurred on the date of the order's issuance), and prior to its termination, provided that such expenditures fall within certain categories. *See* 19 CFR 159.61(c). The CDSOA repeal language parallels the termination of an order or finding. Therefore, for duty orders or findings that have not been previously revoked, expenses must be incurred before October 1, 2007, to be eligible for offset. For duty orders or findings that have been revoked, expenses must be incurred before the effective date of the revocation to be eligible for offset. For example, assume for case A-331-802 Certain Frozen Warm-Water Shrimp and Prawns from Ecuador, that the order date is February 1, 2005, and that the revocation effective date is August 15, 2007. In this case, eligible expenditures would have to be incurred on or after February 1, 2005, up to and including August 14, 2007; expenditures incurred on or after August 15, 2007 cannot be included as eligible qualifying expenditures for A-331-802.

For the convenience and ease of the domestic producers, CBP is providing guidance on what the agency takes into consideration when making a calculation for each of the following categories:

- (1) Manufacturing facilities (Any facility used for the transformation of raw material into a finished product that is the subject of the related order or finding);
- (2) Equipment (Goods that are used in a business environment to aid in the manufacturing of a product that is the subject of the related order or finding);
- (3) Research and development (Seeking knowledge and determining the best techniques for production of the product that is the subject of the related order or finding);
- (4) Personnel training (Teaching of specific useful skills to personnel, that will improve performance in the production process of the product that is the subject of the related order or finding);
- (5) Acquisition of technology (Acquisition of applied scientific knowledge and materials to achieve an objective in the production process of the product that is the subject of the related order or finding);
- (6) Health care benefits for employees paid for by the employer (Health care benefits paid to employees who are producing the specific product that is the subject of the related order or finding);

(7) Pension benefits for employees paid for by the employer (Pension benefits paid to employees who are producing the specific product that is the subject of the related order or finding);

(8) Environmental equipment, training, or technology (Equipment, training, or technology used in the production of the product that is the subject of the related order or finding, that will assist in preventing potentially harmful factors from affecting the environment);

(9) Acquisition of raw materials and other inputs (Purchase of unprocessed materials or other inputs needed for the production of the product that is the subject of the related order or finding); and

(10) Working capital or other funds needed to maintain production (Assets of a business that can be applied to its production of the product that is the subject of the related order or finding).

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must indicate:

(1) The total amount of any qualifying expenditures previously certified by the domestic producer, and the amount certified by category;

(2) The total amount of those expenditures which have been the subject of any prior distribution for the order or finding being certified under 19 U.S.C. 1675c; and

(3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount previously certified as noted in item "(1)" above minus the total amount that was the subject of any prior distribution as noted in item "(2)" above). In accordance with 19 CFR 159.63(b)(2)(i)-(iii), CBP will deduct the amount of any prior distribution from the producer's claimed amount for that case. Total amounts disbursed by CBP under the CDSOA for some prior Fiscal Years are available on the CBP website.

Additionally, under 19 CFR 159.61(c), these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must be related to a specific case. Any false statements made to CBP concerning the amount of distribution being claimed as an offset may give rise to liability under the *False Claims Act* (*see* 31 U.S.C. 3729-3733) and/or to criminal prosecution.

Eligibility To Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer or on another legal basis. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (19 CFR 159.63(b)(3)(i)). Any false statements made in connection with certifications submitted to CBP may give rise to liability under the *False Claims Act* (*see* 31 U.S.C. 3729-3733) and/or to criminal prosecution.

Furthermore, under 19 CFR 159.63(b)(3)(ii), where a domestic producer files a separate certification for more than one order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

Moreover, as required by 19 U.S.C. 1675c(b)(1) and 19 CFR 159.63(b)(3)(iii), the certification must include information as to whether the domestic producer remains in operation at the time the certifications are filed and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer will not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and 19 CFR 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company that opposed the investigation or was acquired by a business related to a company that opposed the investigation. If a domestic producer has been so acquired, the producer will not be considered an affected domestic producer entitled to receive a distribution. However, CBP may not make a final decision regarding a claimant's eligibility to receive funds until certain legal issues which may affect that claimant's eligibility are resolved. In these instances, CBP may withhold an amount of funds corresponding to the claimant's alleged *pro rata* share of funds from distribution pending the resolution of those legal issues.

The certification must be executed and dated by a party legally authorized

to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled "Verification of Certification"). Moreover as provided in 19 CFR 159.64(b)(3), all overpayments to affected domestic producers are recoverable by CBP, and CBP reserves the right to use all available collection tools to recover overpayments, including but not limited to garnishments, court orders, administrative offset, enrollment in the Treasury Offset Program, and/or offset of tax refund payments. Overpayments may occur for a variety of reasons, including but not limited to: Reliquidations, court actions, settlements, insufficient verification of a certification in response to an inquiry from CBP, and administrative errors. With diminished amounts available over time, the likelihood that these events will require the recovery of funds previously distributed will increase. As a result, domestic producers who receive distributions under the CDSOA may wish to set aside any funds received in case it is subsequently determined that an overpayment has occurred. CBP considers the submission of a certification and the negotiation of any distribution checks received as acknowledgements and acceptance of the claimant's obligation to return those funds upon demand.

Review and Correction of Certification

A certification that is submitted in response to this notice of intent to distribute and received within 60 calendar days after the date of publication of the notice in the **Federal Register** may, at CBP's sole discretion, be subject to review before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 business days after the close

of the 60 calendar-day filing period, as provided in 19 CFR 159.63(c). In making this determination, CBP will not speculate as to the reason for the error (*e.g.*, intentional, typographical, *etc.*). CBP must receive a corrected certification from the domestic producer and/or an association filing on behalf of an association member within 10 business days from the date of the original denial letter. Failure to receive a corrected certification within 10 business days will result in denial of the certification at issue. It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and accurate so as to demonstrate the eligibility of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete, and accurate will result in the domestic producer not receiving a distribution and/or a demand for the return of funds.

Verification of Certification

Certifications are subject to CBP's verification. The burden remains on each claimant to fully substantiate all elements of its certification. As such, claimants may be required to provide copies of additional records for further review by CBP. Therefore, parties are required to maintain, and be prepared to produce, records adequately supporting their claims for a period of five years after the filing of the certification (19 CFR 159.63(d)). The records must demonstrate that each qualifying expenditure enumerated in the certification was actually incurred, and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding. Although CBP will accept comments and information from the public and other domestic producers, CBP retains complete discretion regarding the initiation and conduct of investigations stemming from such information. In the event that a distribution is made to a domestic producer from whom CBP later seeks verification of the certification and sufficient supporting documentation is not provided as determined by CBP, then the amounts paid to the affected domestic producer are recoverable by CBP as an overpayment. CBP reserves the right to

use all available collection tools to recover overpayments, including but not limited to garnishments, court orders, administrative offset, enrollment in the Treasury Offset Program, and/or offset of tax refund payments. CBP considers the submission of a certification and the negotiation of any distribution checks received as acknowledgements and acceptance of the claimant's obligation to return those funds upon demand. Additionally, the submission of false statements, documents, or records in connection with a certification or verification of a certification may give rise to liability under the *False Claims Act* (see 31 U.S.C. 3729–3733) and/or to criminal prosecution.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the claimant, the total dollar amount claimed by the party on the certification, as well as the total dollar amount that CBP actually disburses to that affected domestic producer as an offset, will be available for disclosure to the public, as specified in 19 CFR 159.63(e). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public and a waiver of any right to privacy or non-disclosure. Additionally, a statement in a certification that this information is proprietary and exempt from disclosure may result in CBP's rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below together with the affected domestic producers associated with each order or finding who are potentially eligible to receive an offset. Those domestic producers not on the list must allege another basis for eligibility in their certification. Appearance of a domestic producer on the list is not a guarantee of distribution.

Dated: May 12, 2021.

Jeffrey Caine,

Chief Financial Officer, U.S. Customs and Border Protection.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-122-006	AA1921-49	Steel Jacks/Canada	Bloomfield Manufacturing (formerly Harrah Manufacturing). Seaburn Metal Products.
A-122-047	AA1921-127	Elemental Sulphur/Canada	Duval.
A-122-085	731-TA-3	Sugar and Syrups/Canada	Amstar Sugar.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-122-401	731-TA-196	Red Raspberries/Canada	Northwest Food Producers' Association. Oregon Caneberry Commission. Rader Farms. Ron Roberts. Shuksan Frozen Food. Washington Red Raspberry Commission.
A-122-503	731-TA-263	Iron Construction Castings/Canada.	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A-122-506	731-TA-276	Oil Country Tubular Goods/Canada.	CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. US Steel.
A-122-601	731-TA-312	Brass Sheet and Strip/Canada ...	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A-122-605	731-TA-367	Color Picture Tubes/Canada	Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A-122-804	731-TA-422	Steel Rails/Canada	Bethlehem Steel. CF&I Steel.
A-122-814	731-TA-528	Pure Magnesium/Canada	Magnesium Corporation of America.
A-122-822	731-TA-614	Corrosion-Resistant Carbon Steel Flat Products/Canada.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel.
A-122-823	731-TA-575	Cut-to-Length Carbon Steel Plate/Canada.	Weirton Steel. Bethlehem Steel. California Steel Industries. Geneva Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-122-830	731-TA-789	Stainless Steel Plate in Coils/ Canada.	Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. 71 Lumber Co. Almond Bros Lbr Co. Anthony Timberlands. Balfour Lbr Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co. Beadles Lumber Co. Bearden Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co Inc. Blue Mountain Lumber. Buddy Bean Lumber. Burgin Lumber Co Ltd. Burt Lumber Company. C&D Lumber Co. Ceda-Pine Veneer. Cersosimo Lumber Co Inc. Charles Ingram Lumber Co Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Claude Howard Lumber. Clearwater Forest Industries. CLW Inc. CM Tucker Lumber Corp. Coalition for Fair Lumber Imports Executive Committee. Cody Lumber Co. Collins Pine Co. Collums Lumber. Columbus Lumber Co. Contoocook River Lumber. Conway Guiteau Lumber. Cornwright Lumber Co. Crown Pacific. Daniels Lumber Inc. Dean Lumber Co Inc. Deltic Timber Corporation. Devils Tower Forest Products. DiPrizio Pine Sales. Dorchester Lumber Co. DR Johnson Lumber. East Brainerd Lumber Co. East Coast Lumber Company. Eas-Tex Lumber. ECK Wood Products. Ellingson Lumber Co. Elliott Sawmilling. Empire Lumber Co. Evergreen Forest Products. Excalibur Shelving Systems Inc. Exley Lumber Co. FH Stoltze Land & Lumber Co. FL Turlington Lbr Co Inc. Fleming Lumber. Flippo Lumber.
A-122-838	731-TA-928	Softwood Lumber/Canada	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Floragen Forest Products. Frank Lumber Co. Franklin Timber Co. Fred Tebb & Sons. Fremont Sawmill. Frontier Resources. Garrison Brothers Lumber Co and Subsidiaries. Georgia Lumber. Gilman Building Products. Godfrey Lumber. Granite State Forest Prod Inc. Great Western Lumber Co. Greenville Molding Inc. Griffin Lumber Company. Guess Brothers Lumber. Gulf Lumber. Gulf States Paper. Guy Bennett Lumber. Hampton Resources. Hancock Lumber. Hankins Inc. Hankins Lumber Co. Harrigan Lumber. Harwood Products. Haskell Lumber Inc. Hatfield Lumber. Hedstrom Lumber. Herrick Millwork Inc. HG Toler & Son Lumber Co Inc. HG Wood Industries LLC. Hogan & Storey Wood Prod. Hogan Lumber Co. Hood Industries. HS Hoffer & Sons Lumber Co Inc. Hubbard Forest Ind Inc. HW Culp Lumber Co. Idaho Veneer Co. Industrial Wood Products. Intermountain Res LLC. International Paper. J Franklin Jones Lumber Co Inc. Jack Batte & Sons Inc. Jasper Lumber Company. JD Martin Lumber Co. JE Jones Lumber Co. Jerry G Williams & Sons. JH Knighton Lumber Co. Johnson Lumber Company. Jordan Lumber & Supply. Joseph Timber Co. JP Haynes Lbr Co Inc. JV Wells Inc. JW Jones Lumber. Keadle Lumber Enterprises. Keller Lumber. King Lumber Co. Konkolville Lumber. Langdale Forest Products. Laurel Lumber Company. Leavitt Lumber Co. Leesville Lumber Co. Limington Lumber Co. Longview Fibre Co. Lovell Lumber Co Inc. M Kendall Lumber Co. Manke Lumber Co. Marriner Lumber Co. Mason Lumber. MB Heath & Sons Lumber Co. MC Dixon Lumber Co Inc. Mebane Lumber Co Inc. Metcalf Lumber Co Inc. Millry Mill Co Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Moose Creek Lumber Co. Moose River Lumber. Morgan Lumber Co Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens and Hurst Lumber. Packaging Corp of America. Page & Hill Forest Products. Paper, Allied-Industrial, Chemical and Energy Workers Inter- national Union. Parker Lumber. Pate Lumber Co Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant River Lumber Co. Pleasant Western Lumber Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber Inc. Pruitt Lumber Inc. R Leon Williams Lumber Co. RA Yancey Lumber. Rajala Timber Co. Ralph Hamel Forest Products. Randy D Miller Lumber. Rappahannock Lumber Co. Regulus Stud Mills Inc. Riley Creek Lumber. Roanoke Lumber Co. Robbins Lumber. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. SDS Lumber Co. Seacoast Mills Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. SI Storey Lumber. Sierra Forest Products. Sierra Pacific Industries. Sigfridson Wood Products. Silver City Lumber Inc. Somers Lbr & Mfg Inc. South & Jones. South Coast. Southern Forest Industries Inc. Southern Lumber. St Laurent Forest Products.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-122-840	731-TA-954	Carbon and Certain Alloy Steel Wire Rod/Canada.	Starfire Lumber Co. Steely Lumber Co Inc. Stimson Lumber. Summit Timber Co. Sundance Lumber. Superior Lumber. Swanson Superior Forest Products Inc. Swift Lumber. Tamarack Mill. Taylor Lumber & Treating Inc. Temple-Inland Forest Products. Thompson River Lumber. Three Rivers Timber. Thrift Brothers Lumber Co Inc. Timco Inc. Tolleson Lumber. Toney Lumber. TR Miller Mill Co. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. United Brotherhood of Carpenters and Joiners. Viking Lumber Co. VP Kiser Lumber Co. Walton Lumber Co Inc. Warm Springs Forest Products. Westvaco Corp. Wilkins, Kaiser & Olsen Inc. WM Shepherd Lumber Co. WR Robinson Lumber Co Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. Younce & Ralph Lumber Co Inc. Zip-O-Log Mills Inc. AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills. North Dakota Wheat Commission. General Housewares.
A-122-847	731-TA-1019B ...	Hard Red Spring Wheat/Canada	
A-201-504	731-TA-297	Porcelain-on-Steel Cooking Ware/Mexico.	
A-201-601	731-TA-333	Fresh Cut Flowers/Mexico	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery. Alamo Cement. Blue Circle. BoxCrow Cement. Calaveras Cement. Capitol Aggregates. Centex Cement. Florida Crushed Stone. Gifford-Hill. Hanson Permanente Cement. Ideal Basic Industries. Independent Workers of North America (Locals 49, 52, 89, 192 and 471). International Union of Operating Engineers (Local 12).
A-201-802	731-TA-451	Gray Portland Cement and Clinker/Mexico.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-201-805	731-TA-534	Circular Welded Nonalloy Steel Pipe/Mexico.	National Cement Company of Alabama. National Cement Company of California. Phoenix Cement. Riverside Cement. Southdown. Tarmac America. Texas Industries. Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A-201-806	731-TA-547	Carbon Steel Wire Rope/Mexico	Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. United Automobile, Aerospace and Agricultural Implement Workers (Local 960). Williamsport. Wire-rope Works. Wire Rope Corporation of America.
A-201-809	731-TA-582	Cut-to-Length Carbon Steel Plate/Mexico.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A-201-817	731-TA-716	Oil Country Tubular Goods/Mexico.	IPSCO. Koppel Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A-201-820	731-TA-747	Fresh Tomatoes/Mexico	Accomack County Farm Bureau. Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee and Virginia Tomato Growers. Florida Farm Bureau Federation. Florida Fruit and Vegetable Association. Florida Tomato Exchange. Florida Tomato Growers Exchange. Gadsden County Tomato Growers Association. South Carolina Tomato Association.
A-201-822	731-TA-802	Stainless Steel Sheet and Strip/Mexico.	Allegheny Ludlum. Armco. Bethlehem Steel. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America.
A-201-827	731-TA-848	Large-Diameter Carbon Steel Seamless Pipe/Mexico.	North Star Steel. Timken. US Steel. United Steelworkers of America.
A-201-828	731-TA-920	Welded Large Diameter Line Pipe/Mexico.	USS/Kobe. American Cast Iron Pipe. Berg Steel Pipe.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-201-830	731-TA-958	Carbon and Certain Alloy Steel Wire Rod/Mexico.	Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. US Steel. AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A-201-831	731-TA-1027	Prestressed Concrete Steel Wire Strand/Mexico.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp. Aqualon Co a Division of Hercules Inc.
A-201-834	731-TA-1085	Purified Carboxymethylcellulose/Mexico.	
A-274-804	731-TA-961	Carbon and Certain Alloy Steel Wire Rod/Trinidad & Tobago.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A-301-602	731-TA-329	Fresh Cut Flowers/Colombia	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Pajaro Valley Greenhouses. Topstar Nursery.
A-307-803	731-TA-519	Gray Portland Cement and Clinker/Venezuela.	Florida Crushed Stone. Southdown. Tarmac America.
A-307-805	731-TA-537	Circular Welded Nonalloy Steel Pipe/Venezuela.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A-307-807	731-TA-570	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A-307-820	731-TA-931	Silicomanganese/Venezuela	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-331-602	731-TA-331	Fresh Cut Flowers/Ecuador	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
A-337-803	731-TA-768	Fresh Atlantic Salmon/Chile	Atlantic Salmon of Maine. Cooke Aquaculture US. DE Salmon. Global Aqua USA. Island Aquaculture. Maine Coast Nordic. Scan Am Fish Farms. Treats Island Fisheries. Trumpet Island Salmon Farm.
A-337-804	731-TA-776	Preserved Mushrooms/Chile	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A-337-806	731-TA-948	Individually Quick Frozen Red Raspberries/Chile.	A&A Berry Farms. Bahler Farms. Bear Creek Farms. David Burns. Columbia Farms. Columbia Fruit. George Culp. Dobbins Berry Farm. Enfield. Firestone Packing. George Hoffman Farms. Heckel Farms. Wendell Kreder. Curt Maberry. Maberry Packing. Mike & Jean's. Nguyen Berry Farms. Nick's Acres. North Fork. Parson Berry Farm. Pickin 'N' Pluckin. Postage Stamp Farm. Rader. RainSweet. Scenic Fruit. Silverstar Farms. Tim Straub. Thoeny Farms. Townsend. Tsugawa Farms. Updike Berry Farms. Van Laeken Farms.
A-351-503	731-TA-262	Iron Construction Castings/Brazil	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-351-505	731-TA-278	Malleable Cast Iron Pipe Fittings/ Brazil.	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A-351-602	731-TA-308	Carbon Steel Butt-Weld Pipe Fittings/ Brazil.	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A-351-603	731-TA-311	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A-351-605	731-TA-326	Frozen Concentrated Orange Juice/Brazil.	Alcoma Packing. B&W Canning. Berry Citrus Products. Caulkins Indiantown Citrus. Citrus Belle. Citrus World. Florida Citrus Mutual.
A-351-804	731-TA-439	Industrial Nitrocellulose/Brazil	Hercules.
A-351-806	731-TA-471	Silicon Metal/Brazil	American Alloys. Globe Metallurgical. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SIMETCO. Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and 12646).
A-351-809	731-TA-532	Circular Welded Nonalloy Steel Pipe/Brazil.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A-351-817	731-TA-574	Cut-to-Length Carbon Steel Plate/Brazil.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A-351-819	731-TA-636	Stainless Steel Wire Rod/Brazil ..	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-351-820	731-TA-641	Ferrosilicon/Brazil	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A-351-824	731-TA-671	Silicomanganese/Brazil	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3-639).
A-351-825	731-TA-678	Stainless Steel Bar/Brazil	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A-351-826	731-TA-708	Seamless Pipe/Brazil	Koppel Steel. Quanex. Timken. United States Steel.
A-351-828	731-TA-806	Hot-Rolled Carbon Steel Flat Products/Brazil.	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A-351-832	731-TA-953	Carbon and Certain Alloy Steel Wire Rod/Brazil.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A-351-837	731-TA-1024	Prestressed Concrete Steel Wire Strand/Brazil.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A-351-840	731-TA-1089	Certain Orange Juice/Brazil	A Duda & Sons Inc. Alico Inc. John Barnelt. Ben Hill Griffin Inc. Bliss Citrus. BTS A Florida General Partnership. Cain Groves. California Citrus Mutual. Cedar Haven Inc. Citrus World Inc. Clonts Groves Inc. Davis Enterprises Inc. D Edwards Dickinson. Evans Properties Inc. Florida Citrus Commission.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Florida Citrus Mutual. Florida Farm Bureau Federation. Florida Fruit & Vegetable Association. Florida State of Department of Citrus. Flying V Inc. GBS Groves Inc. Graves Brothers Co. H&S Groves. Hartwell Groves Inc. Holly Hill Fruit Products Co. Jack Melton Family Inc. K-Bob Inc. L Dicks Inc. Lake Pickett Partnership Inc. Lamb Revocable Trust Gerilyn Rebecca S Lamb Trustee. Lykes Bros Inc. Martin J McKenna. Orange & Sons Inc. Osgood Groves. William W Parshall. PH Freeman & Sons. Pierie Grove. Raymond & Melissa Pierie. Roper Growers Cooperative. Royal Brothers Groves. Seminole Tribe of Florida Inc. Silverman Groves/Rilla Cooper. Smoak Groves Inc. Sorrells Groves Inc. Southern Gardens Groves Corp. Southern Gardens Processing Corp. Southern Groves Citrus. Sun Ag Inc. Sunkist Growers Inc. Texas Citrus Exchange. Texas Citrus Mutual. Texas Produce Association. Travis Wise Management Inc. Uncle Matt's Fresh Inc. Varn Citrus Growers Inc.
A-357-007	731-TA-157	Carbon Steel Wire Rod/Argentina	Atlantic Steel. Continental Steel. Georgetown Steel. North Star Steel. Raritan River Steel. CF&I Steel. Davis Walker. Forbes Steel & Wire. Oklahoma Steel Wire. Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit. American Alloys. Elkem Metals. Globe Metallurgical. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SiMETCO. SKW Alloys. Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and 12646).
A-357-405	731-TA-208	Barbed Wire and Barbless Wire Strand/Argentina.	Koppel Steel.
A-357-802	731-TA-409	Light-Walled Rectangular Tube/Argentina.	Quanax. Timken. United States Steel. IPSCO. Koppel Steel.
A-357-804	731-TA-470	Silicon Metal/Argentina	
A-357-809	731-TA-707	Seamless Pipe/Argentina	
A-357-810	731-TA-711	Oil Country Tubular Goods/Argentina.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-357-812	731-TA-892	Honey/Argentina	Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe. AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenberg. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's "Naturally Sweet" Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries. Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Jessop Steel. Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America. AL Tech Specialty Steel. Allegheny Ludlum Steel. ARMCO.
A-357-814	731-TA-898	Hot-Rolled Steel Products/Argentina.	
A-401-040	AA1921-114	Stainless Steel Plate/Sweden	
A-401-601	731-TA-316	Brass Sheet and Strip/Sweden ...	
A-401-603	731-TA-354	Stainless Steel Hollow Products/Sweden.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-401-801	731-TA-397-A ...	Ball Bearings/Sweden	Carpenter Technology. Crucible Materials. Damascus Tubular Products. Specialty Tubing Group. Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A-401-801	731-TA-397-B ...	Cylindrical Roller Bearings/Sweden.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A-401-805	731-TA-586	Cut-to-Length Carbon Steel Plate/Sweden.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A-401-806	731-TA-774	Stainless Steel Wire Rod/Sweden.	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America. Aqualon Co a Division of Hercules Inc.
A-401-808	731-TA-1087	Purified Carboxymethylcellulose/Sweden.	
A-403-801	731-TA-454	Fresh and Chilled Atlantic Salmon/Norway.	Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
A-405-802	731-TA-576	Cut-to-Length Carbon Steel Plate/Finland.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. Aqualon Co a Division of Hercules Inc.
A-405-803	731-TA-1084	Purified Carboxymethylcellulose/Finland.	
A-412-801	731-TA-399-A ...	Ball Bearings/United Kingdom	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A-412-801	731-TA-399-B ...	Cylindrical Roller Bearings/United Kingdom.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A-412-803	731-TA-443	Industrial Nitrocellulose/United Kingdom.	Hercules.
A-412-805	731-TA-468	Sodium Thiosulfate/United Kingdom.	Calabrian.
A-412-814	731-TA-587	Cut-to-Length Carbon Steel Plate/United Kingdom.	Bethlehem Steel. California Steel Industries.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-412-818	731-TA-804	Stainless Steel Sheet and Strip/ United Kingdom.	CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A-412-822	731-TA-918	Stainless Steel Bar/United King- dom.	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A-421-701	731-TA-380	Brass Sheet and Strip/Nether- lands.	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. United Steelworkers of America.
A-421-804	731-TA-608	Cold-Rolled Carbon Steel Flat Products/Netherlands.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A-421-805	731-TA-652	Aramid Fiber/Netherlands	E I du Pont de Nemours.
A-421-807	731-TA-903	Hot-Rolled Steel Products/Neth- erlands.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel.
A-421-811	731-TA-1086	Purified Carboxymethylcellulose/ Netherlands.	Wheeling-Pittsburgh Steel Corp. Aqualon Co a Division of Hercules Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-423-077	AA1921-198	Sugar/Belgium	Florida Sugar Marketing and Terminal Association.
A-423-602	731-TA-365	Industrial Phosphoric Acid/Belgium.	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical. Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A-423-805	731-TA-573	Cut-to-Length Carbon Steel Plate/Belgium.	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A-423-808	731-TA-788	Stainless Steel Plate in Coils/Belgium.	Lonza. Pfizer. Hercules.
A-427-001	731-TA-44	Sorbitol/France	Florida Sugar Marketing and Terminal Association.
A-427-009	731-TA-96	Industrial Nitrocellulose/France ...	PQ.
A-427-078	AA1921-199	Sugar/France	Allied Industrial Workers of America.
A-427-098	731-TA-25	Anhydrous Sodium Metasilicate/France.	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A-427-602	731-TA-313	Brass Sheet and Strip/France	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A-427-801	731-TA-392-A ...	Ball Bearings/France	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A-427-801	731-TA-392-B ...	Cylindrical Roller Bearings/France.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A-427-801	731-TA-392-C ...	Spherical Plain Bearings/France	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. Rexnord Inc. Rollway Bearings. Torrington.
A-427-804	731-TA-553	Hot-Rolled Lead and Bismuth Carbon Steel Products/France.	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
A-427-808	731-TA-615	Corrosion-Resistant Carbon Steel Flat Products/France.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-427-811	731-TA-637	Stainless Steel Wire Rod/France	National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-427-814	731-TA-797	Stainless Steel Sheet and Strip/ France.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A-427-816	731-TA-816	Cut-to-Length Carbon Steel Plate/France.	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
A-427-818	731-TA-909	Low Enriched Uranium/France ...	United States Enrichment Corp. USEC Inc.
A-427-820	731-TA-913	Stainless Steel Bar/France	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A-428-082	AA1921-200	Sugar/Germany	Florida Sugar Marketing and Terminal Association.
A-428-602	731-TA-317	Brass Sheet and Strip/Germany	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A-428-801	731-TA-391-A ...	Ball Bearings/Germany	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A-428-801	731-TA-391-B ...	Cylindrical Roller Bearings/Ger- many.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A-428-801	731-TA-391-C ...	Spherical Plain Bearings/Ger- many.	Barden Corp. Emerson Power Transmission. Rollway Bearings. Torrington.
A-428-802	731-TA-419	Industrial Belts/Germany	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A-428-803	731-TA-444	Industrial Nitrocellulose/Germany	Hercules.
A-428-807	731-TA-465	Sodium Thiosulfate/Germany	Calabrian.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-428-814	731-TA-604	Cold-Rolled Carbon Steel Flat Products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A-428-815	731-TA-616	Corrosion-Resistant Carbon Steel Flat Products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A-428-816	731-TA-578	Cut-to-Length Carbon Steel Plate/Germany.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A-428-820	731-TA-709	Seamless Pipe/Germany	Koppel Steel. Quanex. Timken. United States Steel.
A-428-821	731-TA-736	Large Newspaper Printing Presses/Germany.	Rockwell Graphics Systems.
A-428-825	731-TA-798	Stainless Steel Sheet and Strip/Germany.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A-428-830	731-TA-914	Stainless Steel Bar/Germany	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A-437-601	731-TA-341	Tapered Roller Bearings/Hungary	L&S Bearing. Timken. Torrington.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-437-804 A-447-801	731-TA-426 731-TA-340C	Sulfanilic Acid/Hungary Solid Urea/Estonia	Nation Ford Chemical. Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-449-804	731-TA-878	Steel Concrete Reinforcing Bar/ Latvia.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO.
A-451-801	731-TA-340D	Solid Urea/Lithuania	TXI-Chaparral Steel Co. Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-455-802	731-TA-583	Cut-to-Length Carbon Steel Plate/Poland.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel.
A-455-803	731-TA-880	Steel Concrete Reinforcing Bar/ Poland.	United Steelworkers of America. AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO.
A-469-007 A-469-803	731-TA-126 731-TA-585	Potassium Permanganate/Spain Cut-to-Length Carbon Steel Plate/Spain.	TXI-Chaparral Steel Co. Carus Chemical. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-469-805	731-TA-682	Stainless Steel Bar/Spain	US Steel. United Steelworkers of America. AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A-469-807	731-TA-773	Stainless Steel Wire Rod/Spain ..	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-469-810	731-TA-890	Stainless Steel Angle/Spain	Slater Steels. United Steelworkers of America.
A-469-814	731-TA-1083	Chlorinated Isocyanurates/Spain	BioLab Inc. Clearon Corp. Occidental Chemical Corp.
A-471-806	731-TA-427	Sulfanilic Acid/Portugal	Nation Ford Chemical.
A-475-059	AA1921-167	Pressure-Sensitive Plastic Tape/ Italy.	Minnesota Mining & Manufacturing.
A-475-601	731-TA-314	Brass Sheet and Strip/Italy	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A-475-703	731-TA-385	Granular Polytetrafluoroethylene/ Italy.	E I du Pont de Nemours. ICI Americas.
A-475-801	731-TA-393-A ...	Ball Bearings/Italy	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington
A-475-801	731-TA-393-B ...	Cylindrical Roller Bearings/Italy ..	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A-475-802	731-TA-413	Industrial Belts/Italy	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A-475-811	731-TA-659	Grain-Oriented Silicon Electrical Steel/Italy.	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union.
A-475-814	731-TA-710	Seamless Pipe/Italy	Koppel Steel. Quanex. Timken.
A-475-816	731-TA-713	Oil Country Tubular Goods/Italy ..	United States Steel. Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel.
A-475-818	731-TA-734	Pasta/Italy	USS/Kobe. A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-475-820	731-TA-770	Stainless Steel Wire Rod/Italy	Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods. AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-475-822	731-TA-790	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A-475-824	731-TA-799	Stainless Steel Sheet and Strip/ Italy.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A-475-826	731-TA-819	Cut-to-Length Carbon Steel Plate/Italy.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
A-475-828	731-TA-865	Stainless Steel Butt-Weld Pipe Fittings/Italy.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A-475-829	731-TA-915	Stainless Steel Bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America. Hercules.
A-479-801	731-TA-445	Industrial Nitrocellulose/Yugo- slavia.	
A-484-801	731-TA-406	Electrolytic Manganese Dioxide/ Greece.	Chemetals. Kerr-McGee. Rayovac.
A-485-601	731-TA-339	Solid Urea/Romania	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-485-602	731-TA-345	Tapered Roller Bearings/Roma- nia.	L&S Bearing.
A-485-801	731-TA-395	Ball Bearings/Romania	Timken. Torrington. Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A-485-803	731-TA-584	Cut-to-Length Carbon Steel Plate/Romania.	Bethlehem Steel. California Steel Industries.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-485-805	731-TA-849	Small-Diameter Carbon Steel Seamless Pipe/Romania.	CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A-485-806	731-TA-904	Hot-Rolled Steel Products/Romania.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A-489-501	731-TA-273	Welded Carbon Steel Pipe and Tube/Turkey.	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A-489-602	731-TA-364	Aspirin/Turkey	Dow Chemical. Monsanto. Norwich-Eaton.
A-489-805	731-TA-735	Pasta/Turkey	A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-489-807	731-TA-745	Steel Concrete Reinforcing Bar/ Turkey.	ST Specialty Foods. AmeriSteel. Auburn Steel. Birmingham Steel. Commercial Metals. Marion Steel. New Jersey Steel.
A-507-502	731-TA-287	Raw In-Shell Pistachios/Iran	Blackwell Land. California Pistachio Orchard. Keenan Farms. Kern Pistachio Hulling & Drying. Los Ranchos de Poco Pedro. Pistachio Producers of California. TM Duche Nut.
A-508-604	731-TA-366	Industrial Phosphoric Acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A-533-502	731-TA-271	Welded Carbon Steel Pipe and Tube/India.	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A-533-806	731-TA-561	Sulfanilic Acid/India	R-M Industries.
A-533-808	731-TA-638	Stainless Steel Wire Rod/India ...	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-533-809	731-TA-639	Forged Stainless Steel Flanges/ India.	Gerlin. Ideal Forging. Maass Flange.
A-533-810	731-TA-679	Stainless Steel Bar/India	Markovitz Enterprises. AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slaters Steels. Talley Metals Technology. United Steelworkers of America.
A-533-813	731-TA-778	Preserved Mushrooms/India	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A-533-817	731-TA-817	Cut-to-Length Carbon Steel Plate/India.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-533-820	731-TA-900	Hot-Rolled Steel Products/India ..	Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America. Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A-533-823	731-TA-929	Silicomanganese/ndia	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639.
A-533-824	731-TA-933	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/ India.	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc.
A-533-828	731-TA-1025	Prestressed Concrete Steel Wire Strand/India.	Toray Plastics (America). American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A-533-838	731-TA-1061	Carbazole Violet Pigment 23/ India.	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
A-533-843	731-TA-1096	Certain Lined Paper School Supplies/India.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc.
A-538-802	731-TA-514	Cotton Shop Towels/Bangladesh	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW).
A-549-502	731-TA-252	Welded Carbon Steel Pipe and Tube/Thailand.	Milliken. Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A-549-601	731-TA-348	Malleable Cast Iron Pipe Fittings/ Thailand.	Grinnell. Stanley G Flagg.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-549-807	731-TA-521	Carbon Steel Butt-Weld Pipe Fittings/Thailand.	Stockham Valves & Fittings. U-Brand. Ward Manufacturing Hackney. Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. QO Chemicals.
A-549-812	731-TA-705	Furfuryl Alcohol/Thailand	International Longshoreman's and Warehouseman's Union.
A-549-813	731-TA-706	Canned Pineapple/Thailand	Maui Pineapple. Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel.
A-549-817	731-TA-907	Hot-Rolled Steel Products/Thailand.	Wheeling-Pittsburgh Steel Corp. American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A-549-820	731-TA-1028	Prestressed Concrete Steel Wire Strand/Thailand.	Aargus Plastics Inc. Advance Polybags Inc. Advance Polybags (Nevada) Inc. Advance Polybags (Northeast) Inc. Alpha Industries Inc. Alpine Plastics Inc. Ampac Packaging LLC. API Enterprises Inc. Command Packaging. Continental Poly Bags Inc. Durabag Co Inc. Europackaging LLC. Genpak LLC (formerly Continental Superbag LLC). Genpak LLC (formerly Strout Plastics). Hilex Poly Co LLC. Inteplast Group Ltd. PCL Packaging Inc. Poly-Pak Industries Inc. Roplast Industries Inc. Superbag Corp. Unistar Plastics LLC. Vanguard Plastics Inc. VS Plastics LLC.
A-549-821	731-TA-1045	Polyethylene Retail Carrier Bags/Thailand.	America's Catch Inc. Aquafarms Catfish Inc. Carolina Classics Catfish Inc. Catfish Farmers of America. Consolidated Catfish Companies Inc. Delta Pride Catfish Inc. Fish Processors Inc. Guidry's Catfish Inc. Haring's Pride Catfish. Harvest Select Catfish (Alabama Catfish Inc). Heartland Catfish Co (TT&W Farm Products Inc). Prairie Lands Seafood (Illinois Fish Farmers Cooperative). Pride of the Pond. Pride of the South Catfish Inc. Prime Line Inc. Seabrook Seafood Inc. Seacat (Arkansas Catfish Growers). Simmons Farm Raised Catfish Inc. Southern Pride Catfish LLC. Verret Fisheries Inc.
A-552-801	731-TA-1012	Certain Frozen Fish Fillets/Vietnam.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-557-805	731-TA-527	Extruded Rubber Thread/Malaysia.	Globe Manufacturing. North American Rubber Thread.
A-557-809	731-TA-866	Stainless Steel Butt-Weld Pipe Fittings/Malaysia.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A-557-813	731-TA-1044	Polyethylene Retail Carrier Bags/Malaysia.	Aargus Plastics Inc. Advance Polybags Inc. Advance Polybags (Nevada) Inc. Advance Polybags (Northeast) Inc. Alpha Industries Inc. Alpine Plastics Inc. Ampac Packaging LLC. API Enterprises Inc. Command Packaging. Continental Poly Bags Inc. Durabag Co Inc. Europackaging LLC. Genpak LLC (formerly Continental Superbag LLC). Genpak LLC (formerly Strout Plastics). Hilex Poly Co LLC. Inteplast Group Ltd. PCL Packaging Inc. Poly-Pak Industries Inc. Roplast Industries Inc. Superbag Corp. Unistar Plastics LLC. Vanguard Plastics Inc. VS Plastics LLC.
A-559-502	731-TA-296	Small Diameter Standard and Rectangular Pipe and Tube/Singapore.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Cyclops. Hannibal Industries. Laclede Steel. Pittsburgh Tube. Sharon Tube. Western Tube & Conduit. Wheatland Tube.
A-559-601	731-TA-370	Color Picture Tubes/Singapore ...	Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America.
A-559-801	731-TA-396	Ball Bearings/Singapore	Zenith Electronics. Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A-559-802	731-TA-415	Industrial Belts/Singapore	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A-560-801	731-TA-742	Melamine Institutional Dinnerware/Indonesia.	Carlisle Food Service Products. Lexington United. Plastics Manufacturing.
A-560-802	731-TA-779	Preserved Mushrooms/Indonesia	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A-560-803	731-TA-787	Extruded Rubber Thread/Indonesia.	North American Rubber Thread.
A-560-805	731-TA-818	Cut-to-Length Carbon Steel Plate/Indonesia.	Bethlehem Steel. CitiSteel USA Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-560-811	731-TA-875	Steel Concrete Reinforcing Bar/Indonesia.	Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America. AB Steel Mill Inc. AmeriSteel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A-560-812	731-TA-901	Hot-Rolled Steel Products/Indonesia.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A-560-815	731-TA-957	Carbon and Certain Alloy Steel Wire Rod/Indonesia.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A-560-818	731-TA-1097	Certain Lined Paper School Supplies/Indonesia.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW).
A-565-801	731-TA-867	Stainless Steel Butt-Weld Pipe Fittings/Philippines.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A-570-001	731-TA-125	Potassium Permanganate/China	Carus Chemical.
A-570-002	731-TA-130	Chloropicrin/China	LCP Chemicals & Plastics. Niklor Chemical.
A-570-003	731-TA-103	Cotton Shop Towels/China	Milliken. Texel Industries.
A-570-007	731-TA-149	Barium Chloride/China	Wikiti.
A-570-101	731-TA-101	Greige Polyester Cotton Printcloth/China.	Chemical Products. Alice Manufacturing. Clinton Mills. Dan River. Greenwood Mills. Hamrick Mills.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-501	731-TA-244	Natural Bristle Paint Brushes/ China.	M Lowenstein. Mayfair Mills. Mount Vernon Mills. Baltimore Brush. Bestt Liebco. Elder & Jenks. EZ Paint. H&G Industries. Joseph Lieberman & Sons. Purdy. Rubberset. Thomas Paint Applicators. Wooster Brush.
A-570-502	731-TA-265	Iron Construction Castings/China..	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A-570-504	731-TA-282	Petroleum Wax Candles/China ...	The AI Root Company. Candle Artisans Inc. Candle-Lite. Cathedral Candle. Colonial Candle of Cape Cod. General Wax & Candle. Lenox Candles. Lumi-Lite Candle. Meuch-Kreuzer Candle. National Candle Association. Will & Baumer. WNS. General Housewares.
A-570-506	731-TA-298	Porcelain-on-Steel Cooking Ware/China.	
A-570-601	731-TA-344	Tapered Roller Bearings/China ...	L&S Bearing. Timken. Torrington.
A-570-802	731-TA-441	Industrial Nitrocellulose/China	Hercules.
A-570-803	731-TA-457-A ...	Axes and Adzes/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A-570-803	731-TA-457-B ...	Bars and Wedges/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A-570-803	731-TA-457-C ...	Hammers and Sledges/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A-570-803	731-TA-457-D ...	Picks and Mattocks/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A-570-804	731-TA-464	Sparklers/China	BJ Alan. Diamond Sparkler. Elkton Sparkler.
A-570-805	731-TA-466	Sodium Thiosulfate/China	Calabrian.
A-570-806	731-TA-472	Silicon Metal/China	American Alloys. Elkem Metals. Globe Metallurgical. International Union of Electronics, Electrical, Machine and Fur- niture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SiMETCO. SKW Alloys.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-808	731-TA-474	Chrome-Plated Lug Nuts/China ..	Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and 12646). Consolidated International Automotive. Key Manufacturing. McGard. Curtis Tungsten. US Tungsten. Hackney. Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. R-M Industries. AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646). Illinois Tool Works.
A-570-811	731-TA-497	Tungsten Ore Concentrates/ China.	
A-570-814	731-TA-520	Carbon Steel Butt-Weld Pipe Fittings/China.	
A-570-815	731-TA-538	Sulfanilic Acid/China	
A-570-819	731-TA-567	Ferrosilicon/China	
A-570-822	731-TA-624	Helical Spring Lock Washers/ China.	
A-570-825	731-TA-653	Sebacic Acid/China	Union Camp. ACCO USA. Labelon/Noesting. TRICO Manufacturing.
A-570-826	731-TA-663	Paper Clips/China	Blackfeet Indian Writing Instrument. Dixon-Ticonderoga. Empire Berol. Faber-Castell. General Pencil. JR Moon Pencil. Musgrave Pen & Pencil. Panda. Writing Instrument Manufacturers Association, Pencil Section. Elkem Metals. Oil, Chemical and Atomic Workers (Local 3-639). Rhone-Poulenc.
A-570-827	731-TA-669	Cased Pencils/China	A&D Christopher Ranch. Belridge Packing. Colusa Produce. Denice & Filice Packing. El Camino Packing. The Garlic Company. Vessey and Company. Dow Chemical. International Union of Operating Engineers (Local 564). Magnesium Corporation of America. United Steelworkers of America (Local 8319). QO Chemicals. Chattem. Hampshire Chemical. Elkem Metals. Kerr-McGee. Air Products and Chemicals. Carlisle Food Service Products. Lexington United. Plastics Manufacturing. Brake Parts. Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers. Iroquois Tool Systems. Kelsey Hayes. Kinetic Parts Manufacturing. Overseas Auto Parts. Wagner Brake. FMC. A&S Crawfish. Acadiana Fisherman's Co-Op. Arnaudville Seafood.
A-570-828	731-TA-672	Silicomanganese/China	
A-570-830	731-TA-677	Coumarin/China	
A-570-831	731-TA-683	Fresh Garlic/China	
A-570-832	731-TA-696	Pure Magnesium/China	
A-570-835	731-TA-703	Furfuryl Alcohol/China	
A-570-836	731-TA-718	Glycine/China	
A-570-840	731-TA-724	Manganese Metal/China	
A-570-842	731-TA-726	Polyvinyl Alcohol/China	
A-570-844	731-TA-741	Melamine Institutional Dinnerware/China.	
A-570-846	731-TA-744	Brake Rotors/China	
A-570-847	731-TA-749	Persulfates/China	
A-570-848	731-TA-752	Crawfish Tail Meat/China	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-849	731-TA-753	Cut-to-Length Carbon Steel Plate/China.	Atchafalaya Crawfish Processors. Basin Crawfish Processors. Bayou Land Seafood. Becnel's Meat & Seafood. Bellard's Poultry & Crawfish. Bonanza Crawfish Farm. Cajun Seafood Distributors. Carl's Seafood. Catahoula Crawfish. Choplin SFD. CJ's Seafood & Purged Crawfish. Clearwater Crawfish. Crawfish Processors Alliance. Harvey's Seafood. Lawtell Crawfish Processors. Louisiana Premium Seafoods. Louisiana Seafood. LT West. Phillips Seafood. Prairie Cajun Wholesale Seafood Dist. Riceland Crawfish. Schexnider Crawfish. Seafood International Distributors. Sylvester's Processors. Teche Valley Seafood. Acme Metals Inc. Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Lukens Inc. National Steel. US Steel. United Steelworkers of America. Illinois Tool Works. International Staple and Machines. Stanley-Bostitch. LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning. Pfanstiehl Laboratories. Rhodia. Coloma Frozen Foods. Green Valley Apples of California. Knouse Foods Coop. Mason County Fruit Packers Coop. Tree Top. Buffalo Color. United Steelworkers of America. AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co. ABC Coke. Citizens Gas and Coke Utility. Erie Coke.
A-570-850	731-TA-757	Collated Roofing Nails/China	
A-570-851	731-TA-777	Preserved Mushrooms/China	
A-570-852	731-TA-814	Creatine Monohydrate/China	
A-570-853	731-TA-828	Aspirin/China	
A-570-855	731-TA-841	Non-Frozen Apple Juice Concentrate/China.	
A-570-856	731-TA-851	Synthetic Indigo/China	
A-570-860	731-TA-874	Steel Concrete Reinforcing Bar/China.	
A-570-862	731-TA-891	Foundry Coke/China	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-863	731-TA-893	Honey/China	Sloss Industries Corp. Tonawanda Coke. United Steelworkers of America. AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenberg. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's "Naturally Sweet" Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahlman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries. Concerned Employees of Northwest Alloys. Magnesium Corporation of America. United Steelworkers of America. United Steelworkers of America (Local 8319). Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Field Container. Harvard Folding Box. Sterling Packaging. Superior Packaging. PPG Industries. Safelite Glass. Viracon/Curvlite Inc. Visteon Corporation. Krueger International. McCourt Manufacturing. Meco. Virco Manufacturing. Bear Metallurgical Co. Shieldalloy Metallurgical Corp.
A-570-864	731-TA-895	Pure Magnesium (Granular)/ China.	
A-570-865	731-TA-899	Hot-Rolled Steel Products/China	
A-570-866	731-TA-921	Folding Gift Boxes/China	
A-570-867	731-TA-922	Automotive Replacement Glass Windshields/China.	
A-570-868	731-TA-932	Folding Metal Tables and Chairs/ China.	
A-570-873	731-TA-986	Ferrovanadium/China	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-875	731-TA-990	Non-Malleable Cast Iron Pipe Fittings/China.	Anvil International Inc. Buck Co Inc. Frazier & Frazier Industries. Ward Manufacturing Inc. Steel City Corp.
A-570-877	731-TA-1010	Lawn and Garden Steel Fence Posts/China.	
A-570-878	731-TA-1013	Saccharin/China	PMC Specialties Group Inc.
A-570-879	731-TA-1014	Polyvinyl Alcohol/China	Celanese Ltd. E I du Pont de Nemours & Co. Chemical Products Corp.
A-570-880	731-TA-1020	Barium Carbonate/China	Anvil International Inc.
A-570-881	731-TA-1021	Malleable Iron Pipe Fittings/China.	Buck Co Inc. Ward Manufacturing Inc. C-E Minerals. Treibacher Schleifmittel North America Inc. Washington Mills Co Inc.
A-570-882	731-TA-1022	Refined Brown Aluminum Oxide/China.	Five Rivers Electronic Innovations LLC. Industrial Division of the Communications Workers of America (IUECWA).
A-570-884	731-TA-1034	Certain Color Television Receivers/China.	International Brotherhood of Electrical Workers (IBEW).
A-570-886	731-TA-1043	Polyethylene Retail Carrier Bags/China.	Aargus Plastics Inc. Advance Polybags Inc. Advance Polybags (Nevada) Inc. Advance Polybags (Northeast) Inc. Alpha Industries Inc. Alpine Plastics Inc. Ampac Packaging LLC. API Enterprises Inc. Command Packaging. Continental Poly Bags Inc. Durabag Co Inc. Europackaging LLC. Genpak LLC (formerly Continental Superbag LLC). Genpak LLC (formerly Strout Plastics). Hilex Poly Co LLC. Inteplast Group Ltd. PCL Packaging Inc. Poly-Pak Industries Inc. Roplast Industries Inc. Superbag Corp. Unistar Plastics LLC. Vanguard Plastics Inc. VS Plastics LLC.
A-570-887	731-TA-1046	Tetrahydrofurfuryl Alcohol/China	Penn Specialty Chemicals Inc.
A-570-888	731-TA-1047	Ironing Tables and Certain Parts Thereof/China.	Home Products International Inc.
A-570-890	731-TA-1058	Wooden Bedroom Furniture/China.	American Drew. American of Martinsville. Bassett Furniture Industries Inc. Bebe Furniture. Carolina Furniture Works Inc. Carpenters Industrial Union Local 2093. Century Furniture Industries. Country Craft Furniture Inc. Craftique. Crawford Furniture Mfg Corp. EJ Victor Inc. Forest Designs. Harden Furniture Inc. Hart Furniture. Higdon Furniture Co. IUE Industrial Division of CWA Local 82472. Johnston Tombigbee Furniture Mfg Co. Kincaid Furniture Co Inc. L & JG Stickley Inc. Lea Industries. Michels & Co. MJ Wood Products Inc. Mobel Inc. Modern Furniture Manufacturers Inc. Moosehead Mfg Co. Oakwood Interiors. O'Sullivan Industries Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-891	731-TA-1059	Hand Trucks and Certain Parts Thereof/China.	Pennsylvania House Inc. Perdues Inc. Sandberg Furniture Mfg Co Inc. Stanley Furniture Co Inc. Statton Furniture Mfg Assoc. T Copeland & Sons. Teamsters, Chauffeurs, Warehousemen and Helpers Local 991. Tom Seely Furniture. UBC Southern Council of Industrial Workers Local Union 2305. United Steelworkers of America Local 193U. Vaughan Furniture Co Inc. Vaughan-Bassett Furniture Co Inc. Vermont Tubbs. Webb Furniture Enterprises Inc. B&P Manufacturing. Gleason Industrial Products Inc. Harper Trucks Inc. Magline Inc. Precision Products Inc. Wesco Industrial Products Inc.
A-570-892	731-TA-1060	Carbazole Violet Pigment 23/ China.	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
A-570-894	731-TA-1070	Certain Tissue Paper Products/ China.	American Crepe Corp. Cindus Corp. Eagle Tissue LLC. Flower City Tissue Mills Co and Subsidiary. Garlock Printing & Converting Corp. Green Mtn Specialties Inc. Hallmark Cards Inc. Pacon Corp. Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO ("PACE"). Paper Service LTD. Putney Paper. Seaman Paper Co of MA Inc.
A-570-895	731-TA-1069	Certain Crepe Paper Products/ China.	American Crepe Corp. Cindus Corp. Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO ("PACE"). Seaman Paper Co of MA Inc.
A-570-896	731-TA-1071	Alloy Magnesium/China	Garfield Alloys Inc. Glass, Molders, Pottery, Plastics & Allied Workers International Local 374. Halaco Engineering. MagReTech Inc. United Steelworkers of America Local 8319.
A-570-899	731-TA-1091	Artists' Canvas/China	US Magnesium LLC. Duro Art Industries. ICG/Holliston Mills Inc. Signature World Class Canvas LLC. Tara Materials Inc.
A-570-898	731-TA-1082	Chlorinated Isocyanurates/China	BioLab Inc. Clearon Corp. Occidental Chemical Corp.
A-570-901	731-TA-1095	Certain Lined Paper School Supplies/China.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW).
A-570-904	731-TA-1103	Certain Activated Carbon/China	Calgon Carbon Corp. Norit Americas Inc.
A-570-905	731-TA-1104	Certain Polyester Staple Fiber/ China.	DAK Americas LLC. Formed Fiber Technologies LLC. Nan Ya Plastics Corp America. Palmetto Synthetics LLC. United Synthetics Inc (USI).

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-908	731-TA-1110	Soium Hexametaphosphate (SHMP)/China.	Wellman Inc. ICL Performance Products LP. Innophos Inc.
A-580-008	731-TA-134	Color Television Receivers/Korea	Committee to Preserve American Color Television. Independent Radionic Workers of America. Industrial Union Department, AFL-CIO. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine Workers. Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing. Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
A-580-507	731-TA-279	Malleable Cast Iron Pipe Fittings/ Korea.	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A-580-601	731-TA-304	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A-580-603	731-TA-315	Brass Sheet and Strip/Korea	American Telephone & Telegraph. Comdial. Eagle Telephonic. Hercules. E I du Pont de Nemours. Hoechst Celanese. ICI Americas. Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A-580-605	731-TA-369	Color Picture Tubes/Korea	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America. Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. United Automobile, Aerospace and Agricultural Implement Workers (Local 960). Williamsport. Wire-rope Works. Wire Rope Corporation of America. Micron Technology. NEC Electronics. Texas Instruments.
A-580-803	731-TA-427	Small Business Telephone Systems/Korea.	
A-580-805	731-TA-442	Industrial Nitrocellulose/Korea	
A-580-807	731-TA-459	Polyethylene Terephthalate Film/ Korea.	
A-580-809	731-TA-533	Circular Welded Nonalloy Steel Pipe/Korea.	
A-580-810	731-TA-540	Welded ASTM A-312 Stainless Steel Pipe/Korea.	
A-580-811	731-TA-546	Carbon Steel Wire Rope/Korea ..	
A-580-812	731-TA-556	DRAMs of 1 Megabit and Above/ Korea.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-580-813	731-TA-563	Stainless Steel Butt-Weld Pipe Fittings/Korea.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A-580-815	731-TA-607	Cold-Rolled Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A-580-816	731-TA-618	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A-580-825	731-TA-715	Oil Country Tubular Goods/Korea	Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A-580-829	731-TA-772	Stainless Steel Wire Rod/Korea ..	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-580-831	731-TA-791	Stainless Steel Plate in Coils/ Korea.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A-580-834	731-TA-801	Stainless Steel Sheet and Strip/ Korea.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A-580-836	731-TA-821	Cut-to-Length Carbon Steel Plate/Korea.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-580-839	731-TA-825	Polyester Staple Fiber/Korea	National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America. Arteva Specialties Sarl. E I du Pont de Nemours. Intercontinental Polymers. Nan Ya Corporation America. Wellman.
A-580-841	731-TA-854	Structural Steel Beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
A-580-844	731-TA-877	Steel Concrete Reinforcing Bar/ Korea.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A-580-846	731-TA-889	Stainless Steel Angle/Korea	Slater Steels. United Steelworkers of America.
A-580-847	731-TA-916	Stainless Steel Bar/Korea	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A-580-850	731-TA-1017	Polyvinyl Alcohol/Korea	Celanese Ltd. E I du Pont de Nemours & Co.
A-580-852	731-TA-1026	Prestressed Concrete Steel Wire Strand/Korea.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A-583-008	731-TA-132	Small Diameter Carbon Steel Pipe and Tube/Tawian.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Copperweld Tubing. J&L Steel. Kaiser Steel. Merchant Metals. Pittsburgh Tube. Southwestern Pipe. Western Tube & Conduit.
A-583-009	731-TA-135	Color Television Receivers/Tai- wan.	Committee to Preserve American Color Television. Independent Radionic Workers of America. Industrial Union Department, AFL-CIO. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine Workers.
A-583-080	AA1921-197	Carbon Steel Plate/Taiwan	No Petition (self-initiated by Treasury); Commerce service list identifies: Bethlehem Steel. China Steel. US Steel. CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube.
A-583-505	731-TA-277	Oil Country Tubular Goods/Tai- wan.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-583-507	731-TA-280	Malleable Cast Iron Pipe Fittings/Taiwan.	Quanex. US Steel. Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing. General Housewares.
A-583-508	731-TA-299	Porcelain-on-Steel Cooking Ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
A-583-603	731-TA-305	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A-583-605	731-TA-310	Carbon Steel Butt-Weld Pipe Fittings/Taiwan.	Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.
A-583-803	731-TA-410	Light-Walled Rectangular Tube/Taiwan.	American Telephone & Telegraph. Comdial. Eagle Telephonic. Consolidated International Automotive. Key Manufacturing. McGard. Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A-583-806	731-TA-428	Small Business Telephone Systems/Taiwan.	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America.
A-583-810	731-TA-475	Chrome-Plated Lug Nuts/Taiwan	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless. Illinois Tool Works.
A-583-814	731-TA-536	Circular Welded Nonalloy Steel Pipe/Taiwan.	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises. Air Products and Chemicals. Carlisle Food Service Products. Lexington United. Plastics Manufacturing. Illinois Tool Works. International Staple and Machines. Stanley-Bostitch. Micron Technology. AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-583-815	731-TA-541	Welded ASTM A-312 Stainless Steel Pipe/Taiwan.	
A-583-816	731-TA-564	Stainless Steel Butt-Weld Pipe Fittings/Taiwan.	
A-583-820	731-TA-625	Helical Spring Lock Washers/Taiwan.	
A-583-821	731-TA-640	Forged Stainless Steel Flanges/Taiwan.	
A-583-824	731-TA-729	Polyvinyl Alcohol/Taiwan	
A-583-825	731-TA-743	Melamine Institutional Dinnerware/Taiwan.	
A-583-826	731-TA-759	Collated Roofing Nails/Taiwan	
A-583-827	731-TA-762	SRAMs/Taiwan	
A-583-828	731-TA-775	Stainless Steel Wire Rod/Taiwan	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-583-830	731-TA-793	Stainless Steel Plate in Coils/Taiwan.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America
A-583-831	731-TA-803	Stainless Steel Sheet and Strip/Taiwan.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization
A-583-833	731-TA-826	Polyester Staple Fiber/Taiwan	Arteva Specialties Sarl. Intercontinental Polymers. Nan Ya Plastics Corporation America. Wellman.
A-583-835	731-TA-906	Hot-Rolled Steel Products/Taiwan.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel.
A-583-837	731-TA-934	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/Taiwan.	Wheeling-Pittsburgh Steel Corp. DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
A-588-005	731-TA-48	High Power Microwave Amplifiers/Japan.	Aydin. MCL.
A-588-015	AA1921-66	Television Receivers/Japan	AGIV (USA). Casio Computer. CBM America. Citizen Watch. Funai Electric. Hitachi. Industrial Union Department. JC Penny. Matsushita. Mitsubishi Electric. Montgomery Ward. NEC. Orion Electric. PT Imports. Philips Electronics. Philips Magnavox. Sanyo. Sharp. Toshiba. Toshiba America Consumer Products. Victor Company of Japan. Zenith Electronics.
A-588-028	AA1921-111	Roller Chain/Japan	Acme Chain Division, North American Rockwell. American Chain Association. Atlas Chain & Precision Products. Diamond Chain. Link-Belt Chain Division, FMC. Morse Chain Division, Borg Warner. Rex Chainbelt.
A-588-029	AA1921-85	Fish Netting of Man-Made Fiber/Japan.	Jovanovich Supply. LFSI.
A-588-038	AA1921-98	Bicycle Speedometers/Japan	Trans-Pacific Trading. Avocet. Cat Eye.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-588-041	AA1921-115	Synthetic Methionine/Japan	Diversified Products. NS International. Sanyo Electric. Stewart-Warner. Monsanto.
A-588-045	AA1921-124	Steel Wire Rope/Japan	AMSTED Industries.
A-588-046	AA1921-129	Polychloroprene Rubber/Japan ...	E I du Pont de Nemours.
A-588-054	AA1921-143	Tapered Roller Bearings 4 Inches and Under/Japan.	No companies identified as petitioners at the Commission; Commerce service list identifies: American Honda Motor. Federal Mogul. Ford Motor. General Motors. Honda. Hoover-NSK Bearing. Isuzu. Itocho. ITOCHU International. Kanematsu-Goshu USA. Kawasaki Heavy Duty Industries. Komatsu America. Koyo Seiko. Kubota Tractor. Mitsubishi. Motorambar. Nachi America. Nachi Western. Nachi-Fujikoshi. Nippon Seiko. Nissan Motor. Nissan Motor USA. NSK. NTN. Subaru of America. Sumitomo. Suzuki Motor. Timken. Toyota Motor Sales. Yamaha Motors.
A-588-055	AA1921-154	Acrylic Sheet/Japan	Polycast Technology.
A-588-056	AA1921-162	Melamine/Japan	Melamine Chemical.
A-588-068	AA1921-188	Prestressed Concrete Steel Wire Strand/Japan.	American Spring Wire. Armco Steel. Bethlehem Steel. CF&I Steel. Florida Wire & Cable. EF Johnson. Motorola.
A-588-405	731-TA-207	Cellular Mobile Telephones/ Japan.	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A-588-602	731-TA-309	Carbon Steel Butt-Weld Pipe Fittings/Japan.	L&S Bearing. Timken. Torrington.
A-588-604	731-TA-343	Tapered Roller Bearings Over 4 Inches/Japan.	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A-588-605	731-TA-347	Malleable Cast Iron Pipe Fittings/ Japan.	Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America.
A-588-609	731-TA-368	Color Picture Tubes/Japan	Zenith Electronics.
A-588-702	731-TA-376	Stainless Steel Butt-Weld Pipe Fittings/Japan.	Flo-Mac Inc. Flowline. Shaw Alloy Piping Products. Taylor Forge Stainless.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-588-703	731-TA-377	Internal Combustion Industrial Forklift Trucks/Japan.	Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities. Allied Industrial Workers of America. Hyster. Independent Lift Truck Builders Union. International Association of Machinists & Aerospace Workers. United Shop & Service Employees. Allied Industrial Workers of America.
A-588-704	731-TA-379	Brass Sheet and Strip/Japan	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. United Steelworkers of America.
A-588-706	731-TA-384	Nitrile Rubber/Japan	Uniroyal Chemical.
A-588-707	731-TA-386	Granular Polytetrafluoroethylene/Japan.	E I du Pont de Nemours. ICI Americas.
A-588-802	731-TA-389	3.5" Microdisks/Japan	Verbatim.
A-588-804	731-TA-394-A ...	Ball Bearings/Japan	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A-588-804	731-TA-394-B ...	Cylindrical Roller Bearings/Japan	Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A-588-804	731-TA-394-C ...	Spherical Plain Bearings/Japan ..	Barden Corp. Emerson Power Transmission. Kubar Bearings. Rollway Bearings. Torrington.
A-588-806	731-TA-408	Electrolytic Manganese Dioxide/Japan.	Chemetals. Kerr-McGee. Rayovac.
A-588-807	731-TA-414	Industrial Belts/Japan	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A-588-809	731-TA-426	Small Business Telephone Systems/Japan.	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A-588-810	731-TA-429	Mechanical Transfer Presses/Japan.	Allied Products. United Autoworkers of America. United Steelworkers of America.
A-588-811	731-TA-432	Drafting Machines/Japan	Vemco.
A-588-812	731-TA-440	Industrial Nitrocellulose/Japan	Hercules.
A-588-815	731-TA-461	Gray Portland Cement and Clinker/Japan.	Calaveras Cement. Hanson Permanente Cement. Independent Workers of North America (Locals 49, 52, 89, 192 and 471). International Union of Operating Engineers (Local 12). National Cement Co Inc. National Cement Company of California. Southdown.
A-588-817	731-TA-469	Electroluminescent Flat-Panel Displays/Japan.	The Cherry Corporation. Electro Plasma. Magnascreen. OIS Optical Imaging Systems. Photonics Technology. Planar Systems. Plasmaco.
A-588-823	731-TA-571	Professional Electric Cutting Tools/Japan.	Black & Decker.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-588-826	731-TA-617	Corrosion-Resistant Carbon Steel Flat Products/Japan.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Lukens Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel
A-588-831	731-TA-660	Grain-Oriented Silicon Electrical Steel/Japan.	Allegheny Ludlum. Armco Steel. United Steelworkers of America.
A-588-833	731-TA-681	Stainless Steel Bar/Japan	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A-588-835	731-TA-714	Oil Country Tubular Goods/Japan	IPSCO. Koppel Steel. Lone Star Steel Co. Maverick Tube. Newport Steel. North Star Steel. US Steel.
A-588-836	731-TA-727	Polyvinyl Alcohol/Japan	Air Products and Chemicals.
A-588-837	731-TA-737	Large Newspaper Printing Presses/Japan.	Rockwell Graphics Systems.
A-588-838	731-TA-739	Clad Steel Plate/Japan	Lukens Steel.
A-588-839	731-TA-740	Sodium Azide/Japan	American Azide.
A-588-840	731-TA-748	Gas Turbo-Compressor Systems/Japan.	Demag Delaval. Dresser-Rand. United Steelworkers of America.
A-588-841	731-TA-750	Vector Supercomputers/Japan	Cray Research.
A-588-843	731-TA-771	Stainless Steel Wire Rod/Japan	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A-588-845	731-TA-800	Stainless Steel Sheet and Strip/Japan.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A-588-846	731-TA-807	Hot-Rolled Carbon Steel Flat Products/Japan.	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-588-847	731-TA-820	Cut-to-Length Carbon Steel Plate/Japan.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A-588-850	731-TA-847	Large-Diameter Carbon Steel Seamless Pipe/Japan.	North Star Steel. Timken. US Steel. United Steelworkers of America.
A-588-851	731-TA-847	Small-Diameter Carbon Steel Seamless Pipe/Japan.	USS/Kobe. Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe.
A-588-852	731-TA-853	Structural Steel Beams/Japan	Vision Metals' Gulf States Tube. Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
A-588-854	731-TA-860	Tin-Mill Products/Japan	Independent Steelworkers. United Steelworkers of America. Weirton Steel.
A-588-856	731-TA-888	Stainless Steel Angle/Japan	Slater Steels. United Steelworkers of America.
A-588-857	731-TA-919	Welded Large Diameter Line Pipe/Japan.	American Cast Iron Pipe. Berg Steel Pipe. Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. US Steel.
A-588-861	731-TA-1016	Polyvinyl Alcohol/Japan	Celenex Ltd. E I du Pont de Nemours & Co.
A-588-862	731-TA-1023	Certain Ceramic Station Post Insulators/Japan.	Lapp Insulator Co LLC. Newell Porcelain Co Inc. Victor Insulators Inc.
A-588-866	731-TA-1090	Superalloy Degassed Chromium/Japan.	Eramet Marietta Inc.
A-602-803	731-TA-612	Corrosion-Resistant Carbon Steel Flat Products/Australia.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A-791-805	731-TA-792	Stainless Steel Plate in Coils/South Africa.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless.
A-791-808	731-TA-850	Small-Diameter Carbon Steel Seamless Pipe/South Africa.	United Steelworkers of America. Koppel Steel. North Star Steel. Sharon Tube. Timken.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-791-809	731-TA-905	Hot-Rolled Steel Products/South Africa.	US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube. Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel.
A-791-815	731-TA-987	Ferrovanadium/South Africa	Wheeling-Pittsburgh Steel Corp. Bear Metallurgical Co. Shieldalloy Metallurgical Corp.
A-821-801	731-TA-340E	Solid Urea/Russia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-821-802	731-TA-539-C ...	Uranium/Russia	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A-821-804	731-TA-568	Ferrosilicon/Russia	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A-821-805	731-TA-697	Pure Magnesium/Russia	Dow Chemical. International Union of Operating Engineers (Local 564). Magnesium Corporation of America. United Steelworkers of America (Local 8319). Shieldalloy Metallurgical.
A-821-807	731-TA-702	Ferrovanadium and Nitrided Vanadium/Russia.	
A-821-809	731-TA-808	Hot-Rolled Carbon Steel Flat Products/Russia.	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-821-811	731-TA-856	Ammonium Nitrate/Russia	Wheeling-Pittsburgh Steel Corp. Agrium. Air Products and Chemicals. El Dorado Chemical. LaRoche. Mississippi Chemical. Nitram. Wil-Gro Fertilizer.
A-821-817	731-TA-991	Silicon Metal/Russia	Globe Metallurgical Inc. SIMCALA Inc.
A-821-819	731-TA-1072	Pure and Alloy Magnesium/Russia.	Garfield Alloys Inc.
A-822-801	731-TA-340B	Solid Urea/Belarus	Glass, Molders, Pottery, Plastics & Allied Workers International Local 374. Halaco Engineering. MagReTech Inc. United Steelworkers of America Local 8319. US Magnesium LLC.
A-822-804	731-TA-873	Steel Concrete Reinforcing Bar/Belarus.	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-823-801	731-TA-340H	Solid Urea/Ukraine	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co
A-823-802	731-TA-539-E	Uranium/Ukraine	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-823-804	731-TA-569	Ferrosilicon/Ukraine	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources. AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A-823-805	731-TA-673	Silicomanganese/Ukraine	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3-639).

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-823-809	731-TA-882	Steel Concrete Reinforcing Bar/ Ukraine.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A-823-810	731-TA-894	Ammonium Nitrate/Ukraine	Agrium. Air Products and Chemicals. Committee for Fair Ammonium Nitrate Trade. El Dorado Chemical. LaRoche Industries. Mississippi Chemical. Nitram. Prodica.
A-823-811	731-TA-908	Hot-Rolled Steel Products/ Ukraine.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A-823-812	731-TA-962	Carbon and Certain Alloy Steel Wire Rod/Ukraine.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A-831-801	731-TA-340A	Solid Urea/Armenia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-834-806	731-TA-902	Hot-Rolled Steel Products/ Kazakhstan.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A-834-807	731-TA-930	Silicomanganese/Kazakhstan	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-841-804	731-TA-879	Steel Concrete Reinforcing Bar/ Moldova.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A-841-805	731-TA-959	Carbon and Certain Alloy Steel Wire Rod/Moldova.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A-842-801	731-TA-340F	Solid Urea/Tajikistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-843-801	731-TA-340G	Solid Urea/Turkmenistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-843-802	731-TA-539	Uranium/Kazakhstan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A-843-804	731-TA-566	Ferrosilicon/Kazakhstan	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A-844-801	731-TA-340I	Solid Urea/Uzbekistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A-844-802	731-TA-539-F ...	Uranium/Uzbekistan	Ferret Exploration. First Holding. Geomex Minerals.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-851-802	731-TA-846	Small-Diameter Carbon Steel Seamless Pipe/Czech Republic.	IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources. Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube. National Pork Producers Council. Wilson Foods.
C-122-404	701-TA-224	Live Swine/Canada	Bethlehem Steel. CF&I Steel.
C-122-805	701-TA-297	Steel Rails/Canada	Magnesium Corporation of America. Magnesium Corporation of America. 71 Lumber Co. Almond Bros Lbr Co. Anthony Timberlands. Balfour Lbr Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co. Beadles Lumber Co. Bearden Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co Inc. Blue Mountain Lumber. Buddy Bean Lumber. Burgin Lumber Co Ltd. Burt Lumber Company. C&D Lumber Co. Ceda-Pine Veneer. Cersosimo Lumber Co Inc. Charles Ingram Lumber Co Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Claude Howard Lumber. Clearwater Forest Industries. CLW Inc. CM Tucker Lumber Corp. Coalition for Fair Lumber Imports Executive Committee. Cody Lumber Co. Collins Pine Co. Collums Lumber. Columbus Lumber Co. Contoocook River Lumber. Conway Guiteau Lumber. Cornwright Lumber Co. Crown Pacific. Daniels Lumber Inc. Dean Lumber Co Inc. Deltic Timber Corporation. Devils Tower Forest Products. DiPrizio Pine Sales. Dorchester Lumber Co. DR Johnson Lumber. East Brainerd Lumber Co. East Coast Lumber Company. Eas-Tex Lumber. ECK Wood Products. Ellingson Lumber Co.
C-122-815	701-TA-309-A ...	Alloy Magnesium/Canada	
C-122-815	701-TA-309-B ...	Pure Magnesium/Canada	
C-122-839	701-TA-414	Softwood Lumber/Canada	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Elliott Sawmilling. Empire Lumber Co. Evergreen Forest Products. Excalibur Shelving Systems Inc. Exley Lumber Co. FH Stoltze Land & Lumber Co. FL Turlington Lbr Co Inc. Fleming Lumber. Flippo Lumber. Floragen Forest Products. Frank Lumber Co. Franklin Timber Co. Fred Tebb & Sons. Fremont Sawmill. Frontier Resources. Garrison Brothers Lumber Co and Subsidiaries. Georgia Lumber. Gilman Building Products. Godfrey Lumber. Granite State Forest Prod Inc. Great Western Lumber Co. Greenville Molding Inc. Griffin Lumber Company. Guess Brothers Lumber. Gulf Lumber. Gulf States Paper. Guy Bennett Lumber. Hampton Resources. Hancock Lumber. Hankins Inc. Hankins Lumber Co. Harrigan Lumber. Harwood Products. Haskell Lumber Inc. Hatfield Lumber. Hedstrom Lumber. Herrick Millwork Inc. HG Toler & Son Lumber Co Inc. HG Wood Industries LLC. Hogan & Storey Wood Prod. Hogan Lumber Co. Hood Industries. HS Hoffer & Sons Lumber Co Inc. Hubbard Forest Ind Inc. HW Culp Lumber Co. Idaho Veneer Co. Industrial Wood Products. Intermountain Res LLC. International Paper. J Franklin Jones Lumber Co Inc. Jack Batte & Sons Inc. Jasper Lumber Company. JD Martin Lumber Co. JE Jones Lumber Co. Jerry G Williams & Sons. JH Knighton Lumber Co. Johnson Lumber Company. Jordan Lumber & Supply. Joseph Timber Co. JP Haynes Lbr Co Inc. JV Wells Inc. JW Jones Lumber. Keadle Lumber Enterprises. Keller Lumber. King Lumber Co. Konkolville Lumber. Langdale Forest Products. Laurel Lumber Company. Leavitt Lumber Co. Leesville Lumber Co. Limington Lumber Co. Longview Fibre Co. Lovell Lumber Co Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			M Kendall Lumber Co. Manke Lumber Co. Marriner Lumber Co. Mason Lumber. MB Heath & Sons Lumber Co. MC Dixon Lumber Co Inc. Mebane Lumber Co Inc. Metcalf Lumber Co Inc. Millry Mill Co Inc. Moose Creek Lumber Co. Moose River Lumber. Morgan Lumber Co Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens and Hurst Lumber. Packaging Corp of America. Page & Hill Forest Products. Paper, Allied-Industrial, Chemical and Energy Workers International Union. Parker Lumber. Pate Lumber Co Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant River Lumber Co. Pleasant Western Lumber Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber Inc. Pruitt Lumber Inc. R Leon Williams Lumber Co. RA Yancey Lumber. Rajala Timber Co. Ralph Hamel Forest Products. Randy D Miller Lumber. Rappahannock Lumber Co. Regulus Stud Mills Inc. Riley Creek Lumber. Roanoke Lumber Co. Robbins Lumber. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. SDS Lumber Co. Seacoast Mills Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. SI Storey Lumber. Sierra Forest Products.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Sierra Pacific Industries. Sigfridson Wood Products. Silver City Lumber Inc. Somers Lbr & Mfg Inc. South & Jones. South Coast. Southern Forest Industries Inc. Southern Lumber. St Laurent Forest Products. Starfire Lumber Co. Steely Lumber Co Inc. Stimson Lumber. Summit Timber Co. Sundance Lumber. Superior Lumber. Swanson Superior Forest Products Inc. Swift Lumber. Tamarack Mill. Taylor Lumber & Treating Inc. Temple-Inland Forest Products. Thompson River Lumber. Three Rivers Timber. Thrift Brothers Lumber Co Inc. Timco Inc. Tolleson Lumber. Toney Lumber. TR Miller Mill Co. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. United Brotherhood of Carpenters and Joiners. Viking Lumber Co. VP Kiser Lumber Co. Walton Lumber Co Inc. Warm Springs Forest Products. Westvaco Corp. Wilkins, Kaiser & Olsen Inc. WM Shepherd Lumber Co. WR Robinson Lumber Co Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. Younce & Ralph Lumber Co Inc. Zip-O-Log Mills Inc. AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills. North Dakota Wheat Commission. General Housewares.
C-122-841	701-TA-418	Carbon and Certain Alloy Steel Wire Rod/Canada.	
C-122-848	701-TA-430B	Hard Red Spring Wheat/Canada	
C-201-505	701-TA-265	Porcelain-on-Steel Cooking Ware/Mexico.	
C-201-810	701-TA-325	Cut-to-Length Carbon Steel Plate/Mexico.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-307-804	303-TA-21	Gray Portland Cement and Clinker/Venezuela.	United Steelworkers of America. Florida Crushed Stone. Southdown. Tarmac America.
C-307-808	303-TA-23	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
C-333-401	701-TA-E	Cotton Shop Towels/Peru	No case at the Commission; Commerce service list identifies: Durafab. Kleen-Tex Industries. Lewis Eckert Robb. Milliken. Pavis & Harcourt.
C-351-037	104-TAA-21	Cotton Yarn/Brazil	American Yarn Spinners Association. Harriet & Henderson Yarns. LaFar Industries.
C-351-504	701-TA-249	Heavy Iron Construction Castings/Brazil.	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
C-351-604	701-TA-269	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products.
C-351-818	701-TA-320	Cut-to-Length Carbon Steel Plate/Brazil.	United Steelworkers of America. Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel.
C-351-829	701-TA-384	Hot-Rolled Carbon Steel Flat Products/Brazil.	United Steelworkers of America. Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-351-833	701-TA-417	Carbon and Certain Alloy Steel Wire Rod/Brazil.	Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp. AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
C-357-004	701-TA-A	Carbon Steel Wire Rod/Argentina	Atlantic Steel. Continental Steel. Georgetown Steel. North Star Steel. Raritan River Steel.
C-357-813	701-TA-402	Honey/Argentina	AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenberg. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-357-815	701-TA-404	Hot-Rolled Steel Products/Argentina.	Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's "Naturally Sweet" Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahlman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbot's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries. Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-401-401	701-TA-231	Cold-Rolled Carbon Steel Flat Products/Sweden.	WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Bethlehem Steel. Chaparral. US Steel.
C-401-804	701-TA-327	Cut-to-Length Carbon Steel Plate/Sweden.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel.
C-403-802	701-TA-302	Fresh and Chilled Atlantic Salmon/Norway.	United Steelworkers of America. Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
C-408-046	104-TAA-7	Sugar/EU	No petition at the Commission; Commerce service list identifies: AJ Yates. Alexander & Baldwin. American Farm Bureau Federation. American Sugar Cane League. American Sugarbeet Growers Association. Amstar Sugar. Florida Sugar Cane League. Florida Sugar Marketing and Terminal Association. H&R Brokerage. Hawaiian Agricultural Research Center. Leach Farms. Michigan Farm Bureau. Michigan Sugar. Rio Grande Valley Sugar Growers Association. Sugar Cane Growers Cooperative of Florida. Talisman Sugar. US Beet Sugar Association. United States Beet Sugar Association. United States Cane Sugar Refiners' Association.
C-412-815	701-TA-328	Cut-to-Length Carbon Steel Plate/United Kingdom.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel.
C-412-821	701-TA-412	Low Enriched Uranium/United Kingdom.	United Steelworkers of America. United States Enrichment Corp. USEC Inc.
C-421-601	701-TA-278	Fresh Cut Flowers/Netherlands ..	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
C-421-809	701-TA-411	Low Enriched Uranium/Netherlands.	United States Enrichment Corp. USEC Inc.
C-423-806	701-TA-319	Cut-to-Length Carbon Steel Plate/Belgium.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-423-809	701-TA-376	Stainless Steel Plate in Coils/Belgium.	Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C-427-603	701-TA-270	Brass Sheet and Strip/France	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
C-427-805	701-TA-315	Hot-Rolled Lead and Bismuth Carbon Steel Products/France.	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
C-427-810	701-TA-348	Corrosion-Resistant Carbon Steel Flat Products/France.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C-427-815	701-TA-380	Stainless Steel Sheet and Strip/France.	WCI Steel. Weirton Steel. Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America.
C-427-817	701-TA-387	Cut-to-Length Carbon Steel Plate/France.	Zanesville Armco Independent Organization. Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
C-427-819	701-TA-409	Low Enriched Uranium/France ...	United States Enrichment Corp. USEC Inc.
C-428-817	701-TA-340	Cold-Rolled Carbon Steel Flat Products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-428-817	701-TA-349	Corrosion-Resistant Carbon Steel Flat Products/Germany.	Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel.
C-428-817	701-TA-322	Cut-to-Length Carbon Steel Plate/Germany.	Weirton Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C-428-829	701-TA-410	Low Enriched Uranium/Germany	United States Enrichment Corp. USEC Inc.
C-437-805	701-TA-426	Sulfanilic Acid/Hungary	Nation Ford Chemical.
C-469-004	701-TA-178	Stainless Steel Wire Rod/Spain ..	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Colt Industries. Cyclops. Guterl Special Steel. Joslyn Stainless Steels. Republic Steel.
C-469-804	701-TA-326	Cut-to-Length Carbon Steel Plate/Spain.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America
C-475-812	701-TA-355	Grain-Oriented Silicon Electrical Steel/Italy.	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union
C-475-815	701-TA-362	Seamless Pipe/Italy	Koppel Steel. Quanex. Timken.
C-475-817	701-TA-364	Oil Country Tubular Goods/Italy ..	United States Steel. IPSCO. Koppel Steel. Lone Star Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-475-819	701-TA-365	Pasta/Italy	Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe. A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods. AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
C-475-821	701-TA-373	Stainless Steel Wire Rod/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C-475-823	701-TA-377	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C-475-825	701-TA-381	Stainless Steel Sheet and Strip/ Italy.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America.
C-475-827	701-TA-390	Cut-to-Length Carbon Steel Plate/Italy.	Zanesville Armco Independent Organization. Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
C-475-830	701-TA-413	Stainless Steel Bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
C-489-502	701-TA-253	Welded Carbon Steel Pipe and Tube/Turkey.	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-489-806	701-TA-366	Pasta/Turkey	UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube. A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
C-507-501	N/A	Raw In-Shell Pistachios/Iran	Blackwell Land Co. Cal Pure Pistachios Inc. California Pistachio Commission. California Pistachio Orchards. Keenan Farms Inc. Kern Pistachio Hulling & Drying Co-Op. Los Rancheros de Poco Pedro. Pistachio Producers of California. TM Duche Nut Co Inc.
C-507-601	N/A	Roasted In-Shell Pistachios/Iran	Cal Pure Pistachios Inc. California Pistachio Commission. Keenan Farms Inc. Kern Pistachio Hulling & Drying Co-Op. Pistachio Producers of California. TM Duche Nut Co Inc.
C-508-605	701-TA-286	Industrial Phosphoric Acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto.
C-533-063	303-TA-13	Iron Metal Castings/India	Stauffer Chemical. Campbell Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Pinkerton Foundry. US Foundry & Manufacturing. Vulcan Foundry.
C-533-807	701-TA-318	Sulfanilic Acid/India	R-M Industries.
C-533-818	701-TA-388	Cut-to-Length Carbon Steel Plate/India.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C-533-821	701-TA-405	Hot-Rolled Steel Products/India ..	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel.
C-533-825	701-TA-415	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/ India.	Wheeling-Pittsburgh Steel Corp. DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
C-533-829	701-TA-432	Prestressed Concrete Steel Wire Strand/India.	American Spring Wire Corp. Insteel Wire Products Co.

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C-533-839	701-TA-437	Carbazole Violet Pigment 23/India.	Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp. Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co. Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW).
C-533-844	701-TA-442	Certain Lined Paper School Supplies/India.	Milliken. Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C-535-001	701-TA-202	Cotton Shop Towels/Pakistan.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C-549-818	701-TA-408	Hot-Rolled Steel Products/Thailand.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C-560-806	701-TA-389	Cut-to-Length Carbon Steel Plate/Indonesia.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW).
C-560-813	701-TA-406	Hot-Rolled Steel Products/Indonesia.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex. Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries.
C-560-819	701-TA-443	Certain Lined Paper School Supplies/Indonesia.	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.
C-580-602	701-TA-267	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Cold-Rolled Carbon Steel Flat Products/Korea.
C-580-818	701-TA-342	Cold-Rolled Carbon Steel Flat Products/Korea.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-580-818	701-TA-350	Corrosion-Resistant Carbon Steel Flat Products/Korea.	LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C-580-835	701-TA-382	Stainless Steel Sheet and Strip/Korea.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C-580-837	701-TA-391	Cut-to-Length Carbon Steel Plate/Korea.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C-580-842	701-TA-401	Structural Steel Beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
C-580-851	701-TA-431	DRAMs and DRAM Modules/Korea.	Dominion Semiconductor LLC/Micron Technology Inc. Infineon Technologies Richmond LP. Micron Technology Inc.
C-583-604	701-TA-268	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C-791-806	701-TA-379	Stainless Steel Plate in Coils/South Africa.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C-791-810	701-TA-407	Hot-Rolled Steel Products/South Africa.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Petitioners/Supporters for all six cases listed:
A-331-802	731-TA-1065	Certain Frozen Warmwater	Abadie, Al J.
A-351-838	731-TA-1063	Shrimp and Prawns/Ecuador.	Abadie, Anthony.
A-533-840	731-TA-1066	Certain Frozen Warmwater	Abner, Charles.
A-549-822	731-TA-1067	Shrimp and Prawns/Brazil.	Abraham, Steven.
A-552-802	731-TA-1068	Certain Frozen Warmwater	Abshire, Gabriel J.
A-570-893	731-TA-1064	Shrimp and Prawns/India.	Ackerman, Dale J.
		Certain Frozen Warmwater	Acosta, Darryl L.
		Shrimp and Prawns/Thailand.	Acosta, Jerry J Sr.
		Certain Frozen Warmwater	Acosta, Leonard C.
		Shrimp and Prawns/Vietnam.	Acosta, Wilson Pula Sr.
		Certain Frozen Warmwater	Adam, Denise T.
		Shrimp and Prawns/China.	Adam, Michael A.
			Adam, Richard B Jr.
			Adam, Sherry P.
			Adam, William E.
			Adam, Alcide J Jr.
			Adams, Dudley.
			Adams, Elizabeth L.
			Adams, Ervin.
			Adams, Ervin.
			Adams, George E.
			Adams, Hursy J.
			Adams, James Arthur.
			Adams, Kelly.
			Adams, Lawrence J Jr.
			Adams, Randy.
			Adams, Ritchie.
			Adams, Steven A.
			Adams, Ted J.
			Adams, Tim.
			Adams, Whitney P Jr.
			Agoff, Ralph J.
			Aguilar, Rikardo.
			Aguillard, Roddy G.
			Alario, Don Ray.
			Alario, Nat.
			Alario, Pete J.
			Alario, Timmy.
			Albert, Craig J.
			Albert, Junior J.
			Alexander, Everett O.
			Alexander, Robert F Jr.
			Alexie, Benny J.
			Alexie, Corkey A.
			Alexie, Dolphy.
			Alexie, Felix Jr.
			Alexie, Gwendolyn.
			Alexie, John J.
			Alexie, John V.
			Alexie, Larry J Sr.
			Alexie, Larry Jr.
			Alexie, Vincent L Jr.
			Alexis, Barry S.
			Alexis, Craig W.
			Alexis, Micheal.
			Alexis, Monique.
			Alfonso, Anthony E Jr.
			Alfonso, Jesse.
			Alfonso, Nicholas.
			Alfonso, Paul Anthony.
			Alfonso, Randy.
			Alfonso, Terry S Jr.
			Alfonso, Vernon Jr.
			Alfonso, Yvette.
			Alimia, Angelo A Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Allemand, Dean J. Allen, Annie. Allen, Carolyn Sue. Allen, Jackie. Allen, Robin. Allen, Wayne. Allen, Wilbur L. Allen, Willie J III. Allen, Willie Sr. Alphonso, John. Ancalade, Leo J. Ancar, Claudene. Ancar, Jerry T. Ancar, Joe C. Ancar, Merlin Sr. Ancar, William Sr. Ancelet, Gerald Ray. Anderson, Andrew David. Anderson, Ernest W. Anderson, Jerry. Anderson, John. Anderson, Lynwood. Anderson, Melinda Rene. Anderson, Michael Brian. Anderson, Ronald L Sr. Anderson, Ronald Louis Jr. Andonie, Miguel. Andrews, Anthony R. Andry, Janice M. Andry, Rondey S. Angelle, Louis. Anglada, Eugene Sr. Ansardi, Lester. Anselmi, Darren. Aparicio, Alfred. Aparicio, David. Aparicio, Ernest. Arabie, Georgia P. Arabie, Joseph. Arcement, Craig J. Arcement, Lester C. Arcemont, Donald Sr. Arceneaux, Matthew J. Arceneaux, Michael K. Areas, Christopher J. Armbruster, John III. Armbruster, Paula D. Armstrong, Jude Jr. Arnesen, George. Arnold, Lonnie L Jr. Arnona, Joseph T. Arnondin, Robert. Arthur, Brenda J. Assavedo, Floyd. Atwood, Gregory Kenneth. Au, Chow D. Au, Robert. Aucoin, Dewey F. Aucoin, Earl. Aucoin, Laine A. Aucoin, Perry J. Austin, Dennis. Austin, Dennis J. Authement, Brice. Authement, Craig L. Authement, Dion J. Authement, Gordon. Authement, Lance M. Authement, Larry. Authement, Larry Sr. Authement, Roger J. Authement, Sterling P. Autin, Bobby.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Autin, Bruce J. Autin, Kenneth D. Autin, Marvin J. Autin, Paul F Jr. Autin, Roy. Avenel, Albert J Jr. Ba Wells, Tran Thi. Babb, Conny. Babin, Brad. Babin, Joey L. Babin, Klint. Babin, Molly. Babin, Norman J. Babineaux, Kirby. Babineaux, Vicki. Bach, Ke Van. Bach, Reo Long. Backman, Benny. Badeaux, Todd. Baham, Dewayne. Bailey, Albert. Bailey, Antoine III. Bailey, David B Sr. Bailey, Don. Baker, Clarence. Baker, Donald Earl. Baker, James. Baker, Kenneth. Baker, Ronald J. Balderas, Antonio. Baldwin, Richard Prentiss. Ballard, Albert. Ballas, Barbara A. Ballas, Charles J. Baltz, John F. Ban, John. Bang, Bruce K. Barbaree, Joe W. Barbe, Mark A and Cindy. Barber, Louie W Jr. Barber, Louie W Sr. Barbier, Percy T. Barbour, Raymond A. Bargainear, James E. Barisich, George A. Barisich, Joseph J. Barnette, Earl. Barnhill, Nathan. Barrios, Clarence. Barrios, Corbert J. Barrios, Corbert M. Barrios, David. Barrios, John. Barrios, Shane James. Barrois, Angela Gail. Barrois, Dana A. Barrois, Tracy James. Barrois, Wendell Jude Jr. Barthe, Keith Sr. Barthelemy, Allen M. Barthelemy, John A. Barthelemy, Rene T Sr. Barthelemy, Walter A Jr. Bartholomew, Mitchell. Bartholomew, Neil W. Bartholomew, Thomas E. Bartholomew, Wanda C. Basse, Donald J Sr. Bates, Mark. Bates, Ted Jr. Bates, Vernon Jr. Battle, Louis. Baudoin, Drake J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Baudoin, Murphy A. Baudouin, Stephen. Bauer, Gary. Baye, Glen P. Bean, Charles A. Beazley, William E. Becnel, Glenn J. Becnel, Kent. Beecher, Carold F. Beechler, Ronald. Bell, James E. Bell, Ronald A. Bellanger, Arnold. Bellanger, Clifton. Bellanger, Scott J. Belsome, Derrell M. Belsome, Karl M. Bennett, Cecil A Jr. Bennett, Gary Lynn. Bennett, Irin Jr. Bennett, James W Jr. Bennett, Louis. Benoit, Francis J. Benoit, Nicholas L. Benoit, Paula T. Benoit, Tenna J Jr. Benton, Walter T. Berger, Ray W. Bergeron, Alfred Scott. Bergeron, Jeff. Bergeron, Nolan A. Bergeron, Ulysses J. Bernard, Lamont L. Berner, Mark J. Berthelot, Gerard J Sr. Berthelot, James A. Berthelot, Myron J. Bertrand, Jerl C. Beverung, Keith J. Bianchini, Raymond W. Bickham, Leo E. Bienvenu, Charles. Biggs, Jerry W Sr. Bigler, Delbert. Billington, Richard. Billiot, Alfredia. Billiot, Arthur. Billiot, Aubrey. Billiot, Barell J. Billiot, Betty. Billiot, Bobby J. Billiot, Brian K. Billiot, Cassidy. Billiot, Charles Sr. Billiot, Chris J Sr. Billiot, E J E. Billiot, Earl W Sr. Billiot, Ecton L. Billiot, Emary. Billiot, Forest Jr. Billiot, Gerald. Billiot, Harold J. Billiot, Jacco A. Billiot, Jake A. Billiot, James Jr. Billiot, Joseph S Jr. Billiot, Laurence V. Billiot, Leonard F Jr. Billiot, Lisa. Billiot, Mary L. Billiot, Paul J Sr. Billiot, Shirley L. Billiot, Steve M.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Billiot, Thomas Adam. Billiot, Thomas Sr. Billiot, Wenceslaus Jr. Billiot, Alexander J. Biron, Yale. Black, William C. Blackston, Larry E. Blackwell, Wade H III. Blackwell, Wade H Jr. Blanchard, Albert. Blanchard, Andrew J. Blanchard, Billy J. Blanchard, Cyrus. Blanchard, Daniel A. Blanchard, Dean. Blanchard, Douglas Jr. Blanchard, Dwayne. Blanchard, Elgin. Blanchard, Gilbert. Blanchard, Jade. Blanchard, James Blanchard, John F Jr. Blanchard, Katie. Blanchard, Kelly. Blanchard, Matt Joseph. Blanchard, Michael. Blanchard, Quentin Timothy. Blanchard, Roger Sr. Blanchard, Walton H Jr. Bland, Quyen T. Blouin, Roy A. Blume, Jack Jr. Bodden, Arturo. Bodden, Jasper. Bollinger, Donald E. Bolotte, Darren W. Bolton, Larry F. Bondi, Paul J. Bonvillain, Jimmy J. Bonvillian, Donna M. Boone, Clifton Felix. Boone, Donald F II. Boone, Donald F III (Ricky). Boone, Gregory T. Boquet, Noriss P Jr. Boquet, Wilfred Jr. Bordelon, Glenn Sr. Bordelon, James P. Bordelon, Shelby P. Borden, Benny. Borne, Crystal. Borne, Dina L. Borne, Edward Joseph Jr. Borne, Edward Sr. Bosarge, Hubert Lawrence. Bosarge, Robert. Bosarge, Sandra. Bosarge, Steve. Boudlauch, Durel A Jr. Boudoin, Larry Terrell. Boudoin, Nathan. Boudreaux, Brent J. Boudreaux, Elvin J III. Boudreaux, James C Jr. Boudreaux, James N. Boudreaux, Jessie. Boudreaux, Leroy A. Boudreaux, Mark. Boudreaux, Paul Sr. Boudreaux, Richard D. Boudreaux, Ronald Sr. Boudreaux, Sally. Boudreaux, Veronica.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Boudwin, Dwayne. Boudwin, Jewel James Sr. Boudwin, Wayne. Bouise, Norman. Boulet, Irwin J Jr. Boullion, Debra. Bourg, Allen T. Bourg, Benny. Bourg, Chad J. Bourg, Channon. Bourg, Chris. Bourg, Douglas. Bourg, Glenn A. Bourg, Jearmie Sr. Bourg, Kent A. Bourg, Mark. Bourg, Nolan P. Bourg, Ricky J. Bourgeois, Albert P. Bourgeois, Brian J Jr. Bourgeois, Daniel. Bourgeois, Dwayne. Bourgeois, Jake. Bourgeois, Johnny M. Bourgeois, Johnny M Jr. Bourgeois, Leon A. Bourgeois, Louis A. Bourgeois, Merrie E. Bourgeois, Randy P. Bourgeois, Reed. Bourgeois, Webley. Bourn, Chris. Bourque, Murphy Paul. Bourque, Ray. Bousegard, Duvic Jr. Boutte, Manuel J Jr. Bouvier, Colbert A II. Bouzigard, Dale J. Bouzigard, Edgar J III. Bouzigard, Eeris. Bowers, Harold. Bowers, Tommy. Boyd, David E Sr. Boyd, Elbert. Boykin, Darren L. Boykin, Thomas Carol. Bradley, James. Brady, Brian. Brandhurst, Kay. Brandhurst, Ray E Sr. Brandhurst, Raymond J. Braneff, David G. Brannan, William P. Branom, Donald James Jr. Braud, James M. Brazan, Frank J. Breaud, Irvin F Jr. Breaux, Barbara. Breaux, Brian J. Breaux, Charlie M. Breaux, Clifford. Breaux, Colin E. Breaux, Daniel Jr. Breaux, Larry J. Breaux, Robert J Jr. Breaux, Shelby. Briscoe, Robert F Jr. Britsch, L D Jr. Broussard, Dwayne E. Broussard, Eric. Broussard, Keith. Broussard, Larry. Broussard, Mark A.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Broussard, Roger David. Broussard, Roger R. Broussard, Steve P. Brown, Cindy B. Brown, Colleen. Brown, Donald G. Brown, John W. Brown, Paul R. Brown, Ricky. Brown, Toby H. Bruce, Adam J. Bruce, Adam J Jr. Bruce, Bob R. Bruce, Daniel M Sr. Bruce, Eli T Sr. Bruce, Ermelda L. Bruce, Gary J Sr. Bruce, James P. Bruce, Lester J Jr. Bruce, Margie L. Bruce, Mary P. Bruce, Nathan. Bruce, Robert. Bruce, Russell. Brudnock, Peter Sr. Brunet, Elton J. Brunet, Joseph A. Brunet, Joseph A. Brunet, Levy J Jr. Brunet, Raymond Sr. Bryan, David N. Bryant, Ina Fay V. Bryant, Jack D Sr. Bryant, James Larry. Buford, Ernest. Bui, Ben. Bui, Dich. Bui, Dung Thi. Bui, Huong T. Bui, Ngan. Bui, Nhuan. Bui, Nuoi Van. Bui, Tai. Bui, Tien. Bui, Tommy. Bui, Xuan and De Nguyen. Bui, Xuanmai. Bull, Delbert E. Bundy, Belvina (Kenneth). Bundy, Kenneth Sr. Bundy, Nicky. Bundy, Ronald J. Bundy, Ronnie J. Buquet, John Jr. Buras, Clayton M. Buras, Leander. Buras, Robert M Jr. Buras, Waylon J. Burlett, Elliott C. Burlett, John C Jr. Burnell, Charles B. Burnell, Charles R. Burnham, Deanna Lea. Burns, Stuart E. Burroughs, Lindsey Hilton Jr. Burton, Ronnie. Busby, Hardy E. Busby, Tex H. Busch, RC. Bush, Robert A. Bussey, Tyler. Butcher, Dorothy. Butcher, Rocky J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Butler, Albert A. Butler, Aline M. Bychurch, Johnny. Bychurch, Johnny Jr. Cabanilla, Alex. Caboz, Jose Santos. Cacioppo, Anthony Jr. Caddell, David. Cadiere, Mae Quick. Cadiere, Ronald J. Cahill, Jack. Caillouet, Stanford Jr. Caison, Jerry Lane Jr. Calcagno, Stephen Paul Sr. Calderone, John S. Callahan, Gene P Sr. Callahan, Michael J. Callahan, Russell. Callais, Ann. Callais, Franklin D. Callais, Gary D. Callais, Michael. Callais, Michael. Callais, Michael. Callais, Sandy. Callais, Terrence. Camardelle, Anna M. Camardelle, Chris J. Camardelle, David. Camardelle, Edward J III. Camardelle, Edward J Jr. Camardelle, Harris A. Camardelle, Knowles. Camardelle, Noel T. Camardelle, Tilman J. Caminita, John A III. Campo, Donald Paul. Campo, Kevin. Campo, Nicholas J. Campo, Roy. Campo, Roy Sr. Camus, Ernest M Jr. Canova, Carl. Cantrelle, Alvin. Cantrelle, Eugene J. Cantrelle, Otis A Sr. Cantrelle, Otis Jr (Buddy). Cantrelle, Philip A. Cantrelle, Tate Joseph. Canty, Robert Jamies. Cao, Anna. Cao, Billy. Cao, Billy Viet. Cao, Binh Quang. Cao, Chau. Cao, Dan Dien. Cao, Dung Van. Cao, Gio Van. Cao, Hiep A. Cao, Linh Huyen. Cao, Nghia Thi. Cao, Nhieu V. Cao, Si-Van. Cao, Thanh Kim. Cao, Tuong Van. Carinhas, Jack G Jr. Carl, Joseph Allen. Carlos, Gregory. Carlos, Irvin. Carmadelle, David J. Carmadelle, Larry G. Carmadelle, Rudy J. Carrere, Anthony T Jr. Carrier, Larry J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Caruso, Michael. Casanova, David W Sr. Cassagne, Alphonse G III. Cassagne, Alphonse G IV. Cassidy, Mark. Casso, Joseph. Castelin, Gilbert. Castelin, Sharon. Castellanos, Raul L. Castelluccio, John A Jr. Castille, Joshua. Caulfield, Adolph Jr. Caulfield, Hope. Caulfield, James M Jr. Caulfield, Jean. Cepriano, Salvador. Cerde, Julius W Jr. Cerise, Marla. Chabert, John. Chaisson, Dean J. Chaisson, Henry. Chaisson, Vincent A. Chaix, Thomas B III. Champagne, Brian. Champagne, Harold P. Champagne, Kenton. Champagne, Leon J. Champagne, Leroy A. Champagne, Lori. Champagne, Timmy D. Champagne, Willard. Champlin, Kim J. Chance, Jason R. Chancey, Jeff. Chapa, Arturo. Chaplin Robert G Sr. Chaplin, Saxby Stowe. Charles, Christopher. Charpentier, Allen J. Charpentier, Alvin J. Charpentier, Daniel J. Charpentier, Lawrence. Charpentier, Linton. Charpentier, Melanie. Charpentier, Murphy Jr. Charpentier, Robert J. Chartier, Michelle. Chau, Minh Huu. Chauvin, Anthony. Chauvin, Anthony P Jr. Chauvin, Carey M. Chauvin, David James. Chauvin, James E. Chauvin, Kimberly Kay. Cheeks, Alton Bruce. Cheers, Elwood. Chenier, Ricky. Cheramie, Alan. Cheramie, Alan J Jr. Cheramie, Alton J. Cheramie, Berwick Jr. Cheramie, Berwick Sr. Cheramie, Daniel James Sr. Cheramie, Danny. Cheramie, David J. Cheramie, David P. Cheramie, Dickey J. Cheramie, Donald. Cheramie, Enola. Cheramie, Flint. Cheramie, Harold L. Cheramie, Harry J Sr. Cheramie, Harry Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Cheramie, Harvey Jr. Cheramie, Harvey Sr. Cheramie, Henry J Sr. Cheramie, James A. Cheramie, James P. Cheramie, Jody P. Cheramie, Joey J. Cheramie, Johnny. Cheramie, Joseph A. Cheramie, Lee Allen. Cheramie, Linton J. Cheramie, Mark A. Cheramie, Murphy J. Cheramie, Nathan A Sr. Cheramie, Neddy P. Cheramie, Nicky J. Cheramie, Ojess M. Cheramie, Paris P. Cheramie, Robbie. Cheramie, Rodney E Jr. Cheramie, Ronald. Cheramie, Roy. Cheramie, Roy A. Cheramie, Sally K. Cheramie, Terry J. Cheramie, Terry Jr. Cheramie, Timmy. Cheramie, Tina. Cheramie, Todd M. Cheramie, Tommy. Cheramie, Wayne A. Cheramie, Wayne A Jr. Cheramie, Wayne F Sr. Cheramie, Wayne J. Cheramie, Webb Jr. Chevalier, Mitch. Chew, Thomas J. Chhun, Samantha. Chiasson, Jody J. Chiasson, Manton P Jr. Chiasson, Michael P. Childress, Gordon. Chisholm, Arthur. Chisholm, Henry Jr. Christen, David Jr. Christen, Vernon. Christmas, John T Jr. Chung, Long V. Ciaccio, Vance. Cibilic, Bozidar. Cieutat, John. Cisneros, Albino. Ciuffi, Michael L. Clark, James M. Clark, Jennings. Clark, Mark A. Clark, Ricky L. Cobb, Michael A. Cochran, Jimmy. Coleman, Ernest. Coleman, Freddie Jr. Colletti, Rodney A. Collier, Ervin J. Collier, Wade. Collins, Bernard J. Collins, Bruce J Jr. Collins, Donald. Collins, Earline. Collins, Eddie F Jr. Collins, Jack. Collins, Jack. Collins, Julius. Collins, Lawson Bruce Sr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Collins, Lindy S Jr. Collins, Logan A Jr. Collins, Robert. Collins, Timmy P. Collins, Vendon Jr. Collins, Wilbert Jr. Collins, Woodrow. Colson, Chris and Michelle. Comardelle, Michael J. Comeaux, Allen J. Compeaux, Curtis J. Compeaux, Gary P. Compeaux, Harris. Cone, Jody. Contreras, Mario. Cook, Edwin A Jr. Cook, Edwin A Sr. Cook, Joshua. Cook, Larry R Sr. Cook, Scott. Cook, Theodore D. Cooksey, Ernest Neal. Cooper, Acy J III. Cooper, Acy J Jr. Cooper, Acy Sr. Cooper, Christopher W. Cooper, Jon C. Cooper, Marla F. Cooper, Vincent J. Copeman, John R. Corley, Ronald E. Cornett, Eddie. Cornwall, Roger. Cortez, Brenda M. Cortez, Cathy. Cortez, Curtis. Cortez, Daniel P. Cortez, Edgar. Cortez, Keith J. Cortez, Leslie J. Cosse, Robert K. Coston, Clayton. Cotsovolos, John Gordon. Coulon, Allen J Jr. Coulon, Allen J Sr. Coulon, Amy M. Coulon, Cleveland F. Coulon, Darrin M. Coulon, Don. Coulon, Earline N. Coulon, Ellis Jr. Coursey, John W. Courville, Ronnie P. Cover, Darryl L. Cowardrey, Michael Dudley. Cowardrey, Michael Nelson. Crain, Michael T. Crawford, Bryan D. Crawford, Steven J. Creamer, Qvention. Credeur, Todd A Sr. Credeur, Tony J. Creppel, Carlton. Creppel, Catherine. Creppel, Craig Anthony. Creppel, Freddy. Creppel, Isadore Jr. Creppel, Julinne G III. Creppel, Kenneth. Creppel, Kenneth. Creppel, Nathan J Jr. Creppell, Michel P. Cristina, Charles J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Crochet, Sterling James. Crochet, Tony J. Crosby, Benjy J. Crosby, Darlene. Crosby, Leonard W Jr. Crosby, Ted J. Crosby, Thomas. Crum, Lonnie. Crum, Tommy Lloyd. Cruz, Jesus. Cabbage, Melinda T. Cuccia, Anthony J. Cuccia, Anthony J Jr. Cuccia, Kevin. Cumbie, Bryan E. Cure, Mike. Curole, Keith J. Curole, Kevin P. Curole, Margaret B. Curole, Willie P Jr. Cutrer, Jason C. Cvitanovich, T. Daigle, Alfred. Daigle, Cleve and Nona. Daigle, David John. Daigle, E.J. Daigle, Glenn. Daigle, Jamie J. Daigle, Jason. Daigle, Kirk. Daigle, Leonard P. Daigle, Lloyd. Daigle, Louis J. Daigle, Melanie. Daigle, Michael J. Daigle, Michael Wayne and JoAnn. Daisy, Jeff. Dale, Cleveland L. Dang, Ba. Dang, Dap. Dang, David. Dang, Duong. Dang, Khang. Dang, Khang and Tam Phan. Dang, Loan Thi. Dang, Minh. Dang, Minh Van. Dang, Son. Dang, Tao Kevin. Dang, Thang Duc. Dang, Thien Van. Dang, Thuong. Dang, Thuy. Dang, Van D. Daniels, David. Daniels, Henry. Daniels, Leslie. Danos, Albert Sr. Danos, James A. Danos, Jared. Danos, Oliver J. Danos, Ricky P. Danos, Rodney. Danos, Timothy A. d'Antignac, Debi. d'Antignac, Jack. Dantin, Archie A. Dantin, Mark S Sr. Dantin, Stephen Jr. Dao, Paul. Dao, Vang. Dao-Nguyen, Chrysti. Darda, Albert L Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Darda, Gertrude. Darda, Herbert. Darda, J C. Darda, Jeremy. Darda, Tammy. Darda, Trudy. Dardar, Alvin. Dardar, Basile J. Dardar, Basile Sr. Dardar, Cindy. Dardar, David. Dardar, Donald S. Dardar, Edison J Sr. Dardar, Gayle Picou. Dardar, Gilbert B. Dardar, Gilbert Sr. Dardar, Isadore J Jr. Dardar, Jacqueline. Dardar, Jonathan M. Dardar, Lanny. Dardar, Larry J. Dardar, Many. Dardar, Neal A. Dardar, Norbert. Dardar, Patti V. Dardar, Percy B Sr. Dardar, Rose. Dardar, Rusty J. Dardar, Samuel. Dardar, Summersgill. Dardar, Terry P. Dardar, Toney M Jr. Dardar, Toney Sr. Dargis, Stephen M. Dassau, Louis. David, Philip J Jr. Davis, Cliff. Davis, Daniel A. Davis, Danny A. Davis, James. Davis, John W. Davis, Joseph D. Davis, Michael Steven. Davis, Ronald B. Davis, William T Jr. Davis, William Theron. Dawson, JT. de la Cruz, Avery T. Dean, Ilene L. Dean, John N. Dean, Stephen. DeBarge, Brian K. DeBarge, Sherry. DeBarge, Thomas W. Decoursey, John. Dedon, Walter. Deere, Daryl. Deere, David E. Deere, Dennis H. Defelice, Robin. Defelice, Tracie L. DeHart, Ashton J Sr. Dehart, Bernard J. Dehart, Blair. Dehart, Clevis. Dehart, Clevis Jr. DeHart, Curtis P Sr. Dehart, Eura Sr. Dehart, Ferrell John. Dehart, Leonard M. DeHart, Troy. DeJean, Chris N Jr. DeJean, Chris N Sr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Dekemel, Bonnie D. Dekemel, Wm J Jr. Delande, Paul. Delande, Ten Chie. Delatte, Michael J Sr. Delaune, Kip M. Delaune, Thomas J. Delaune, Todd J. Delcambre, Carroll A. Delgado, Jesse. Delino, Carlton. Delino, Lorene. Deloach, Stephen W Jr. DeMoll, Herman J Jr. DeMoll, Herman J Sr. DeMoll, James C Jr. DeMoll, Ralph. DeMoll, Robert C. DeMoll, Terry R. DeMolle, Freddy. DeMolle, Otis. Dennis, Fred. Denty, Steve. Deroche, Barbara H. Derouen, Caghe. Deshotel, Rodney. DeSilvey, David. Despaux, Byron J. Despaux, Byron J Jr. Despaux, Glen A. Despaux, Ken. Despaux, Kerry. Despaux, Suzanna. Detillier, David E. DeVaney, Bobby C Jr. Dickey, Wesley Frank. Diep, Vu. Dinger, Anita. Dinger, Corbert Sr. Dinger, Eric. Dingler, Mark H. Dinh, Chau Thanh. Dinh, Khai Duc. Dinh, Lien. Dinh, Toan. Dinh, Vincent. Dion, Ernest. Dion, Paul A. Dion, Thomas Autry. Disalvo, Paul A. Dismuke, Robert E Sr. Ditcharo, Dominick III. Dixon, David. Do, Cuong V. Do, Dan C. Do, Dung V. Do, Hai Van. Do, Hieu. Do, Hung V. Do, Hung V. Do, Johnny. Do, Kiet Van. Do, Ky Hong. Do, Ky Quoc. Do, Lam. Do, Liet Van. Do, Luong Van. Do, Minh Van. Do, Nghiep Van. Do, Ta. Do, Ta Phon. Do, Than Viet. Do, Thanh V.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Do, Theo Van. Do, Thien Van. Do, Tinh A. Do, Tri. Do, Vi V. Doan, Anh Thi. Doan, Joseph. Doan, Mai. Doan, Minh. Doan, Ngoc. Doan, Tran Van. Domangue, Darryl. Domangue, Emile. Domangue, Mary. Domangue, Michael. Domangue, Paul. Domangue, Ranzell Sr. Domangue, Stephen. Domangue, Westley. Domingo, Carolyn. Dominique, Amy R. Dominique, Gerald R. Donini, Ernest N. Donnelly, David C. Donohue, Holly M. Dooley, Denise F. Dopson, Craig B. Dore, Presley J. Dore, Preston J Jr. Dorr, Janthan C Jr. Doucet, Paul J Sr. Downey, Colleen. Doxey, Robert Lee Sr. Doxey, Ruben A. Doxey, William L. Doyle, John T. Drawdy, John Joseph. Drury, Bruce W Jr. Drury, Bruce W Sr. Drury, Bryant J. Drury, Eric S. Drury, Helen M. Drury, Jeff III. Drury, Kevin. Drury, Kevin S Sr. Drury, Steve R. Drury, Steven J. Dubberly, James F. Dubberly, James Michael. Dubberly, James Michael Jr. Dubberly, John J. Dubois, Euris A. Dubois, John D Jr. Dubois, Lonnie J. Duck, Kermit Paul. Dudenhefer, Anthony. Dudenhefer, Connie S. Dudenhefer, Eugene A. Dudenhefer, Milton J Jr. Duet, Brad J. Duet, Darrel A. Duet, Guy J. Duet, Jace J. Duet, Jay. Duet, John P. Duet, Larson. Duet, Ramie. Duet, Raymond J. Duet, Tammy B. Duet, Tyrone. Dufrene, Archie. Dufrene, Charles. Dufrene, Curt F.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Dufrene, Elson A. Dufrene, Eric F. Dufrene, Eric F Jr. Dufrene, Eric John. Dufrene, Golden J. Dufrene, Jeremy M. Dufrene, Juliette B. Dufrene, Leroy J. Dufrene, Milton J. Dufrene, Ronald A Jr. Dufrene, Ronald A Sr. Dufrene, Scottie M. Dufrene, Toby. Dugar, Edward A II. Dugas, Donald John. Dugas, Henri J IV. Duhe, Greta. Duhe, Robert. Duhon, Charles. Duhon, Douglas P. Duncan, Faye E. Duncan, Gary. Duncan, Loyde C. Dunn, Bob. Duong, Billy. Duong, Chamroeun. Duong, EM. Duong, Ho Tan Phi. Duong, Kong. Duong, Mau. Duplantis, Blair P. Duplantis, David. Duplantis, Frankie J. Duplantis, Maria. Duplantis, Teddy W. Duplantis, Wedgir J Jr. Duplessis, Anthony James Sr. Duplessis, Bonnie S. Duplessis, Clarence R. Dupre, Brandon P. Dupre, Cecile. Dupre, David A. Dupre, Davis J Jr. Dupre, Easton J. Dupre, Jimmie Sr. Dupre, Linward P. Dupre, Mary L. Dupre, Michael J. Dupre, Michael J Jr. Dupre, Randall P. Dupre, Richard A. Dupre, Rudy P. Dupre, Ryan A. Dupre, Tony J. Dupre, Troy A. Dupree, Bryan. Dupree, Derrick. Dupree, Malcolm J Sr. Dupuis, Clayton J. Durand, Walter Y. Dusang, Melvin A. Duval, Denva H Sr. Duval, Wayne. Dyer, Nadine D. Dyer, Tony. Dykes, Bert L. Dyson, Adley L Jr. Dyson, Adley L Sr. Dyson, Amy. Dyson, Casandra. Dyson, Clarence III. Dyson, Jimmy Jr. Dyson, Jimmy L Sr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Dyson, Kathleen. Dyson, Maricela. Dyson, Phillip II. Dyson, Phillip Sr. Dyson, William. Eckerd, Bill. Edens, Angela Blake. Edens, Donnie. Edens, Jeremy Donald. Edens, Nancy M. Edens, Steven L. Edens, Timothy Dale. Edgar, Daniel. Edgar, Joey. Edgerson, Roosevelt. Edwards, Tommy W III. Ellerbee, Jody Duane. Ellison, David Jr. Encalade, Alfred Jr. Encalade, Anthony T. Encalade, Cary. Encalade, Joshua C. Encalade, Stanley A. Enclade, Joseph L. Enclade, Michael Sr and Jeannie Pitre. Enclade, Rodney J. Englade, Alfred. Ennis, A L Jr. Erickson, Grant G. Erlinger, Carroll. Erlinger, Gary R. Eschete, Keith A. Esfeller, Benny A. Eskine, Kenneth. Esponge, Ernest J. Estaves, David Sr. Estaves, Ricky Joseph. Estay, Allen J. Estay, Wayne. Esteves, Anthony E Jr. Estrada, Orestes. Evans, Emile J Jr. Evans, Kevin J. Evans, Lester. Evans, Lester J Jr. Evans, Tracey J Sr. Everson, George C. Eymard, Brian P Sr. Eymard, Jervis J and Carolyn B. Fabiano, Morris C. Fabra, Mark. Fabre, Alton Jr. Fabre, Ernest J. Fabre, Kelly V. Fabre, Peggy B. Fabre, Sheron. Fabre, Terry A. Fabre, Wayne M. Falcon, Mitchell J. Falgout, Barney. Falgout, Jerry P. Falgout, Leroy J. Falgout, Timothy J. Fanguy, Barry G. Fanning, Paul Jr. Farris, Thomas J. Fasone, Christopher J. Fasone, William J. Faulk, Lester J. Favaloro, Thomas J. Favre, Michael Jr. Fazende, Jeffery. Fazende, Thomas.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Fazende, Thomas G. Fazzio, Anthony. Fazzio, Douglas P. Fazzio, Maxine J. Fazzio, Steve. Felarise, E.J. Felarise, Wayne A Sr. Fernandez, John. Fernandez, Laudelino. Ferrara, Audrey B. Ficarino, Dominick Jr. Fields, Bryan. Fillinich, Anthony. Fillinich, Anthony Sr. Fillinich, Jack. Fincher, Penny. Fincher, William. Fisch, Burton E. Fisher, Kelly. Fisher, Kirk. Fisher, Kirk A. Fitch, Adam. Fitch, Clarence J Jr. Fitch, Hanson. Fitzgerald, Burnell. Fitzgerald, Kirk. Fitzgerald, Kirk D. Fitzgerald, Ricky J Jr. Fleming, John M. Fleming, Meigs F. Fleming, Mike. Flick, Dana. Flores, Helena D. Flores, Thomas. Flowers, Steve W. Flowers, Vincent F. Folse, David M. Folse, Heath. Folse, Mary L. Folse, Ronald B. Fonseca, Francis Sr. Fontaine, William S. Fontenot, Peggy D. Ford, Judy. Ford, Warren Wayne. Foreman, Ralph Jr. Foret, Alva J. Foret, Billy J. Foret, Brent J. Foret, Glenn. Foret, Houston. Foret, Jackie P. Foret, Kurt J Sr. Foret, Lovelace A Sr. Foret, Loveless A Jr. Foret, Mark M. Foret, Patricia C. Forrest, David P. Forsyth, Hunter. Forsythe, John. Fortune, Michael A. France, George J. Francis, Albert. Franklin, James K. Frankovich, Anthony. Franks, Michael. Frauenberger, Richard Wayne. Frazier, David J. Frazier, David M. Frazier, James. Frazier, Michael. Frederick, Davis. Frederick, Johnnie and Jeannie.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Fredrick, Michael. Freeman, Arthur D. Freeman, Darrel P Sr. Freeman, Kenneth F. Freeman, Larry Scott. Frelich, Charles P. Frelich, Floyd J. Frelich, Kent. Frerics, Doug. Frerks, Albert R Jr. Frickey, Darell. Frickey, Darren. Frickey, Dirk I. Frickey, Eric J. Frickey, Harry J Jr. Frickey, Jimmy. Frickey, Rickey J. Frickey, Westley J. Friloux, Brad. Frisella, Jeanette M. Frisella, Jerome A Jr. Frost, Michael R. Fruge, Wade P. Gadson, James. Gaines, Dwayne. Gala, Christine. Galjour, Jess J. Galjour, Reed. Gallardo, John W. Gallardo, Johnny M. Galliano, Anthony. Galliano, Horace J. Galliano, Joseph Sr. Galliano, Logan J. Galliano, Lynne L. Galliano, Moise Jr. Galloway, AT Jr. Galloway, Jimmy D. Galloway, Judy L. Galloway, Mark D. Galt, Giles F. Gambarella, Luvencie J. Ganoi, Kristine. Garcia, Ana Maria. Garcia, Anthony. Garcia, Edward. Garcia, Kenneth. Garner, Larry S. Gary, Dalton J. Gary, Ernest J. Gary, Leonce Jr. Garza, Andres. Garza, Jose H. Gaskill, Elbert Clinton and Sandra. Gaspar, Timothy. Gaspard, Aaron and Hazel C. Gaspard, Dudley A Jr. Gaspard, Leonard J. Gaspard, Michael A. Gaspard, Michael Sr. Gaspard, Murry. Gaspard, Murry A Jr. Gaspard, Murry Sr. Gaspard, Murvin. Gaspard, Ronald Sr. Gaspard, Ronald Wayne Jr. Gaubert, Elizabeth. Gaubert, Gregory M. Gaubert, Melvin. Gaudet, Allen J IV. Gaudet, Ricky Jr. Gauthier, Hewitt J Sr. Gautreaux, William A.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Gay, Norman F. Gay, Robert G. Gazzier, Daryl G. Gazzier, Emanuel A. Gazzier, Wilfred E. Gegenheimer, William F. Geiling, James. Geisman, Tony. Gentry, Robert. Gentry, Samuel W Jr. George, James J Jr. Gericca, Clara. Gericca, Peter. Giambrone, Corey P. Gibson, Eddie E. Gibson, Joseph. Gibson, Ronald F. Gilden, Eddie Jr. Gilden, Eddie Sr. Gilden, Inez W. Gilden, Wayne. Gillikin, James D. Girard, Chad Paul. Giroir, Mark S. Gisclair, Anthony J. Gisclair, Anthony Joseph Sr. Gisclair, August. Gisclair, Dallas J Sr. Gisclair, Doyle A. Gisclair, Kip J. Gisclair, Ramona D. Gisclair, Wade. Gisclair, Walter. Glover, Charles D. Glynn, Larry. Goetz, George. Goings, Robert Eugene. Golden, George T. Golden, William L. Gollot, Brian. Gollot, Edgar R. Gonzales, Arnold Jr. Gonzales, Mrs Cyril E Jr. Gonzales, Rene R. Gonzales, Rudolph S Jr. Gonzales, Rudolph S Sr. Gonzales, Sylvia A. Gonzales, Tim J. Gonzalez, Jorge Jr. Gonzalez, Julio. Gordon, Donald E. Gordon, Patrick Alvin. Gore, Henry H. Gore, Isabel. Gore, Pam. Gore, Thomas L. Gore, Timothy Ansel. Gottschalk, Gregory. Gourgues, Harold C Jr. Goutierrez, Tony C. Govea, Joaquin. Graham, Darrell. Graham, Steven H. Granger, Albert J Sr. Granich, James. Granier, Stephen J. Grass, Michael. Graves, Robert N Sr. Gray, Jeannette. Gray, Monroe. Gray, Shirley E. Gray, Wayne A Sr. Graybill, Ruston.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Green, Craig X. Green, James W. Green, James W Jr. Green, Shaun. Greenlaw, W C Jr. Gregoire, Ernest L. Gregoire, Rita M. Gregory, Curtis B. Gregory, Mercedes E. Grice, Raymond L Jr. Griffin, Alden J Sr. Griffin, Craig. Griffin, David D. Griffin, Elvis Joseph Jr. Griffin, Faye. Griffin, Faye Ann. Griffin, Jimmie J. Griffin, Nolt J. Griffin, Rickey. Griffin, Sharon. Griffin, Timothy. Griffin, Troy D. Groff, Alfred A. Groff, John A. Groover, Hank. Gros, Brent J Sr. Gros, Craig J. Gros, Danny A. Gros, Gary Sr. Gros, Junius A Jr. Gros, Keven. Gros, Michael A. Gross, Homer. Grossie, Janet M. Grossie, Shane A. Grossie, Tate. Grow, Jimmie C. Guenther, John J. Guenther, Raphael. Guerra, Bruce. Guerra, Chad L. Guerra, Fabian C. Guerra, Guy A. Guerra, Jerry V Sr. Guerra, Kurt P Sr. Guerra, Ricky J Sr. Guerra, Robert. Guerra, Ryan. Guerra, Troy A. Guerra, William Jr. Guidroz, Warren J. Guidry, Alvin A. Guidry, Andy J. Guidry, Arthur. Guidry, Bud. Guidry, Calvin P. Guidry, Carl J. Guidry, Charles J. Guidry, Chris J. Guidry, Clarence P. Guidry, Clark. Guidry, Clint. Guidry, Clinton P Jr. Guidry, Clyde A. Guidry, David. Guidry, Dobie. Guidry, Douglas J Sr. Guidry, Elgy III. Guidry, Elgy Jr. Guidry, Elwin A Jr. Guidry, Gerald A. Guidry, Gordon Jr. Guidry, Guillaume A.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Guidry, Harold. Guidry, Jason. Guidry, Jessie J. Guidry, Jessie Joseph. Guidry, Jonathan B. Guidry, Joseph T Jr. Guidry, Keith M. Guidry, Kenneth J. Guidry, Kerry A. Guidry, Marco. Guidry, Maurin T and Tamika. Guidry, Michael J. Guidry, Nolan J Sr. Guidry, Randy Peter Sr. Guidry, Rhonda S. Guidry, Robert C. Guidry, Robert Joseph. Guidry, Robert Wayne. Guidry, Roger. Guidry, Ronald. Guidry, Roy Anthony. Guidry, Roy J. Guidry, Tammy. Guidry, Ted. Guidry, Thomas P. Guidry, Timothy. Guidry, Troy. Guidry, Troy. Guidry, Ulysses. Guidry, Vicki. Guidry, Wayne J. Guidry, Wyatt. Guidry, Yvonne. Guidry-Calva, Holly A. Guilbeaux, Donald J. Guilbeaux, Lou. Guillie, Shirley. Guillory, Horace H. Guillot, Benjamin J Jr. Guillot, Rickey A. Gullledge, Lee. Gutierrez, Anita. Guy, Jody. Guy, Kimothy Paul. Guy, Wilson. Ha, Cherie Lan. Ha, Co Dong. Ha, Lai Thuy Thi. Ha, Lyanna. Hadwall, John R. Hafford, Johnny. Hagan, Jules. Hagan, Marianna. Haiglea, Robbin Richard. Hales, William E. Halili, Rhonda L. Hall, Byron S. Hall, Darrel T Sr. Hall, Lorrie A. Hammer, Michael P. Hammock, Julius Michael. Hancock, Jimmy L. Handlin, William Sr. Hang, Cam T. Hansen, Chris. Hansen, Eric P. Hanson, Edmond A. Harbison, Louis. Hardee, William P. Hardison, Louis. Hardy John C. Hardy, Sharon. Harmon, Michelle.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Harrington, George J. Harrington, Jay. Harris, Bobby D. Harris, Buster. Harris, Jimmy Wayne Sr. Harris, Johnny Ray. Harris, Kenneth A. Harris, Ronnie. Harris, Susan D. Harris, William. Harrison, Daniel L. Hartmann, Leon M Jr. Hartmann, Walter Jr. Hattaway, Errol Henry. Haycock, Kenneth. Haydel, Gregory. Hayes, Clinton. Hayes, Katherine F. Hayes, Lod Jr. Hean, Hong. Heathcock, Walter Jr. Hebert, Albert Joseph. Hebert, Bernie. Hebert, Betty Jo. Hebert, Chris. Hebert, Craig J. Hebert, David. Hebert, David Jr. Hebert, Earl J. Hebert, Eric J. Hebert, Jack M. Hebert, Johnny Paul. Hebert, Jonathan. Hebert, Jules J. Hebert, Kim M. Hebert, Lloyd S III. Hebert, Michael J. Hebert, Myron A. Hebert, Norman. Hebert, Patrick. Hebert, Patrick A. Hebert, Pennington Jr. Hebert, Philip. Hebert, Robert A. Hebert, Terry W. Hedrick, Gerald J Jr. Helmer, Claudia A. Helmer, Gerry J. Helmer, Herman C Jr. Helmer, Kenneth. Helmer, Larry J Sr. Helmer, Michael A Sr. Helmer, Rusty L. Helmer, Windy. Hemmenway, Jack. Henderson, Brad. Henderson, Curtis. Henderson, David A Jr. Henderson, David A Sr. Henderson, Johnny. Henderson, Olen. Henderson, P Loam. Henry, Joanne. Henry, Rodney. Herbert, Patrick and Terry. Hereford, Rodney O Jr. Hereford, Rodney O Sr. Hernandez, Corey. Herndon, Mark. Hertel, Charles W. Hertz, Edward C Sr. Hess, Allen L Sr. Hess, Henry D Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Hess, Jessica R. Hess, Wayne B. Hewett, Emma. Hewett, James. Hickman, John. Hickman, Marvin. Hicks, Billy M. Hicks, James W. Hicks, Larry W. Hicks, Walter R. Hien, Nguyen. Higgins, Joseph J III. Hill, Darren S. Hill, Joseph R. Hill, Sharon. Hill, Willie E Jr. Hills, Herman W. Hingle, Barbara E. Hingle, Rick A. Hingle, Roland T Jr. Hingle, Roland T Sr. Hingle, Ronald J. Hinojosa, R. Hinojosa, Randy. Hinojosa, Ricky A. Hipps, Nicole Marie. Ho, Dung Tan. Ho, Hung. Ho, Jennifer. Ho, Jimmy. Ho, Lam. Ho, Nam. Ho, Nga T. Ho, O. Ho, Sang N. Ho, Thanh Quoc. Ho, Thien Dang. Ho, Tien Van. Ho, Tri Tran. Hoang, Dung T. Hoang, Hoa T and Tam Hoang. Hoang, Huy Van. Hoang, Jennifer Vu. Hoang, John. Hoang, Julie. Hoang, Kimberly. Hoang, Linda. Hoang, Loan. Hoang, San Ngoc. Hoang, Tro Van. Hoang, Trung Kim. Hoang, Trung Tuan. Hoang, Vincent Huynh. Hodges, Ralph W. Hoffpaviiz, Harry K. Holland, Vidal. Holler, Boyce Dwight Jr. Hollier, Dennis J. Holloway, Carl D. Hong, Tai Van. Hood, Malcolm. Hopton, Douglas. Horaist, Shawn P. Hostetler, Warren L II. Hotard, Claude. Hotard, Emile J Jr. Howard, Jeff. Howerin, Billy Sr. Howerin, Wendell Sr. Hubbard, Keith. Hubbard, Perry III. Huber, Berry T. Huber, Charles A.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Huck, Irma Elaine. Huck, Steven R. Huckabee, Harold. Hue, Patrick A. Hughes, Brad J. Hults, Thomas. Hutcherson, Daniel J. Hutchinson, Douglas. Hutchinson, George D. Hutchinson, William H. Hutto, Cynthia E. Hutto, Henry G Jr. Huynh, Chien Thi. Huynh, Dong Xuan. Huynh, Dung. Huynh, Dung V. Huynh, Hai. Huynh, Hai. Huynh, Hai Van. Huynh, Hoang D. Huynh, Hoang Van. Huynh, Hung. Huynh, James N. Huynh, Johnny Hiep. Huynh, Johnnie. Huynh, Kim. Huynh, Lay. Huynh, Long. Huynh, Mack Van. Huynh, Mau Van. Huynh, Minh. Huynh, Minh Van. Huynh, Nam Van. Huynh, Thai. Huynh, Tham Thi. Huynh, Thanh. Huynh, Thanh. Huynh, The V. Huynh, Tri. Huynh, Truc. Huynh, Tu. Huynh, Tu. Huynh, Tung Van. Huynh, Van X. Huynh, Viet Van. Huynh, Vuong Van. Hymel, Joseph Jr. Hymel, Michael D. Hymel, Nolan J Sr. Ingham, Herbert W. Inglis, Richard M. Ingraham, Joseph S. Ingraham, Joyce. Ipock, Billy. Ipock, William B. Ireland, Arthur Allen. Iver, George Jr. Jackson, Alfred M. Jackson, Carl John. Jackson, David. Jackson, Eugene O. Jackson, Glenn C Jr. Jackson, Glenn C Sr. Jackson, James Jerome. Jackson, John D. Jackson, John Elton Sr. Jackson, Levi. Jackson, Nancy L. Jackson, Robert W. Jackson, Shannon. Jackson, Shaun C. Jackson, Steven A. Jacob, Ronald R.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Jacob, Warren J Jr. Jacobs, L Anthony. Jacobs, Lawrence F. Jarreau, Billy and Marilyn. Jarvis, James D. Jaye, Emma. Jeanfreau, Vincent R. Jefferies, William. Jemison, Timothy Michael Sr. Jennings, Jacob. Joffrion, Harold J Jr. Johnson, Albert F. Johnson, Ashley Lamar. Johnson, Bernard Jr. Johnson, Brent W. Johnson, Bruce Wareem. Johnson, Carl S. Johnson, Carolyn. Johnson, Clyde Sr. Johnson, David G. Johnson, David Paul. Johnson, Gary Allen Sr. Johnson, George D. Johnson, Michael A. Johnson, Randy J. Johnson, Regenia. Johnson, Robert. Johnson, Ronald Ray Sr. Johnson, Steve. Johnson, Thomas Allen Jr. Johnston, Ronald. Joly, Nicholas J Jr. Jones, Charles. Jones, Clinton. Jones, Daisy Mae. Jones, Jeffery E. Jones, Jerome N Sr. Jones, John W. Jones, Larry. Jones, Len. Jones, Michael G Sr. Jones, Paul E. Jones, Perry T Sr. Jones, Ralph William. Jones, Richard G Sr. Jones, Stephen K. Jones, Wayne. Joost, Donald F. Jordan, Dean. Jordan, Hubert William III (Bert). Jordan, Hurbert W Jr. Judalet, Ramon G. Judy, William Roger. Julian, Ida. Julian, John I Sr. Juneau, Anthony Sr. Juneau, Bruce. Juneau, Robert A Jr and Laura K. Jurjevich, Leander J. Kain, Jules B Sr. Kain, Martin A. Kalliainen, Dale. Kalliainen, Richard. Kang, Chamroeun. Kang, Sambo. Kap, Brenda. Keen, Robert Steven. Keenan, Robert M. Kellum, Kenneth Sr. Kellum, Larry Gray Sr. Kellum, Roxanne. Kelly, Roger B. Kelly, Thomas E.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Kendrick, Chuck J. Kennair, Michael S. Kennedy, Dothan. Kenney, David Jr. Kenney, Robert W. Kent, Michael A. Keo, Bunly. Kerchner, Steve. Kern, Thurmond. Khin, Sochenda. Khui, Lep and Nga Ho. Kidd, Frank. Kiesel, Edward C and Lorraine T. Kiff, Hank J. Kiff, Melvin. Kiffe, Horace. Kim, Puch. Kimbrough, Carson. Kim-Tun, Soeun. King, Andy A. King, Donald Jr. King, James B. King, Thornell. King, Wesley. Kit, An. Kizer, Anthony J. Kleimann, Robert. Knapp, Alton P Jr. Knapp, Alton P Sr. Knapp, Ellis L Jr. Knapp, Melvin L. Knapp, Theresa. Knecht, Frederick Jr. Knezek, Lee. Knight, George. Knight, Keith B. Knight, Robert E. Koch, Howard J. Kong, Seng. Konitz, Bobby. Koo, Herman. Koonce, Curtis S. Koonce, Howard N. Kopszywa, Mark L. Kopszywa, Stanley J. Kotulja, Stejepan. Kraemer, Bridget. Kraemer, Wilbert J. Kraemer, Wilbert Jr. Kramer, David. Krantz, Arthur Jr. Krantz, Lori. Kraver, C W. Kreger, Ronald A Sr. Kreger, Roy J Sr. Kreger, Ryan A. Krennerich, Raymond A. Kroke, Stephen E. Kruth, Frank D. Kuchler, Alphonse L III. Kuhn, Bruce A Sr. Kuhn, Gerard R Jr. Kuhn, Gerard R Sr. Kuhns, Deborah. LaBauve, Kerry. LaBauve, Sabrina. LaBauve, Terry. LaBiche, Todd A. LaBove, Carroll. LaBove, Frederick P. Lachica, Jacqueline. Lachico, Douglas. Lacobon, Tommy W Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Lacobon, Tony C. LaCoste, Broddie. LaCoste, Carl. LaCoste, Dennis E. LaCoste, Grayland J. LaCoste, Malcolm Jr. LaCoste, Melvin. LaCoste, Melvin W Jr. LaCoste, Ravin J Jr. LaCoste, Ravin Sr. Ladner, Clarence J III. Ladson, Earlene G. LaFont, Douglas A Sr. LaFont, Edna S. LaFont, Jackin. LaFont, Noces J Jr. LaFont, Weyland J Sr. LaFrance, Joseph T. Lagarde, Frank N. Lagarde, Gary Paul. Lagasse, Michael F. Lai, Hen K. Lai, Then. Lam, Cang Van. Lam, Cui. Lam, Dong Van. Lam, Hiep Tan. Lam, Lan Van. Lam, Lee Phenh. Lam, Phan. Lam, Qui. Lam, Sochen. Lam, Tai. Lam, Tinh Huu. Lambas, Jessie J Sr. Lanclos, Paul. Landry, David A. Landry, Dennis J. Landry, Edward N Jr. Landry, George. Landry, George M. Landry, James F. Landry, Jude C. Landry, Robert E. Landry, Ronald J. Landry, Samuel J Jr. Landry, Tracy. Lane, Daniel E. Lapeyrouse, Lance M. Lapeyrouse, Rosalie. Lapeyrouse, Tillman Joseph. LaRive, James L Jr. LaRoche, Daniel S. Lasseigne, Betty. Lasseigne, Blake. Lasseigne, Floyd. Lasseigne, Frank. Lasseigne, Harris Jr. Lasseigne, Ivy Jr. Lasseigne, Jefferson. Lasseigne, Jefferson P Jr. Lasseigne, Johnny J. Lasseigne, Marlene. Lasseigne, Nolan J. Lasseigne, Trent. Lat, Chhiet. Latapie, Charlotte A. Latapie, Crystal. Latapie, Jerry. Latapie, Joey G. Latapie, Joseph. Latapie, Joseph F Sr. Latapie, Travis.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Latiolais, Craig J. Latiolais, Joel. Lau, Ho Thanh. Laughlin, James G. Laughlin, James Mitchell. Laurent, Yvonne M. Lavergne, Roger. Lawdros, Terrance Jr. Layrisson, Michael A III. Le, Amanda. Le, An Van. Le, Ben. Le, Binh T. Le, Cheo Van. Le, Chinh Thanh. Le, Chinh Thanh and Yen Vo. Le, Cu Thi. Le, Dai M. Le, Dale. Le, David Rung. Le, Du M. Le, Duc V. Le, Duoc M. Le, Hien V. Le, Houston T. Le, Hung. Le, Jimmy. Le, Jimmy and Hoang. Le, Khoa. Le, Kim. Le, Ky Van. Le, Lang Van. Le, Lily. Le, Lisa Tuyet Thi. Le, Loi. Le, Minh Van. Le, Muoi Van. Le, My. Le, My V. Le, Nam and Xhan-Minh Le. Le, Nam Van. Le, Nhieu T. Le, Nhut Hoang. Le, Nu Thi. Le, Phuc Van. Le, Que V. Le, Quy. Le, Robert. Le, Sam Van. Le, Sau V. Le, Son. Le, Son. Le, Son H. Le, Son Quoc. Le, Son Van. Le, Su. Le, Tam V. Le, Thanh Huong. Le, Tong Minh. Le, Tony. Le, Tracy Lan Chi. Le, Tuan Nhu. Le, Viet Hoang. Le, Vui. Leaf, Andrew Scott. Leary, Roland. LeBeauf, Thomas. LeBlanc, Donnie. LeBlanc, Edwin J. LeBlanc, Enoch P. LeBlanc, Gareth R III. LeBlanc, Gareth R Jr. LeBlanc, Gerald E.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			LeBlanc, Hubert C. LeBlanc, Jerald. LeBlanc, Jesse Jr. LeBlanc, Keenon Anthony. LeBlanc, Lanvin J. LeBlanc, Luke A. LeBlanc, Marty J. LeBlanc, Marty J Jr. LeBlanc, Mickel J. LeBlanc, Robert Patrick. LeBlanc, Scotty M. LeBlanc, Shelton. LeBlanc, Terry J. LeBoeuf, Brent J. LeBoeuf, Emery J. LeBoeuf, Joseph R. LeBoeuf, Tammy Y. LeBouef, Dale. LeBouef, Edward J. LeBouef, Ellis J Jr. LeBouef, Gillis. LeBouef, Jimmie. LeBouef, Leslie. LeBouef, Lindy J. LeBouef, Micheal J. LeBouef, Raymond. LeBouef, Tommy J. LeBouef, Wiley Sr. LeBourgeois, Stephen A. LeCompte, Alena. LeCompte, Aubrey J. LeCompte, Etha. LeCompte, Jesse C Jr. LeCompte, Jesse Jr. LeCompte, Jesse Sr. LeCompte, Lyle. LeCompte, Patricia F. LeCompte, Todd. LeCompte, Troy A Sr. Ledet, Brad. Ledet, Bryan. Ledet, Carlton. Ledet, Charles J. Ledet, Jack A. Ledet, Kenneth A. Ledet, Mark. Ledet, Maxine B. Ledet, Mervin. Ledet, Phillip John. Ledoux, Dennis. Ledwig, Joe J. Lee, Carl. Lee, James K. Lee, Marilyn. Lee, Otis M Jr. Lee, Raymond C. Lee, Robert E. Lee, Steven J. Leek, Mark A. LeGaux, Roy J Jr. Legendre, Kerry. Legendre, Paul. Leger, Andre. LeGros, Alex M. LeJeune, Philip Jr. LeJeune, Philip Sr. LeJeune, Ramona V. LeJeunee, Debbie. LeJuine, Eddie R. LeLand, Allston Bochet. Leland, Rutledge B III. Leland, Rutledge B Jr. LeLeaux, David.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Leleux, Kevin J. Lemoine, Jeffery Jr. Leonard, Dan. Leonard, Dexter J Jr. Leonard, Micheal A. Lepine, Leroy L. Lesso, Rudy Jr. Lester, Shawn. Levron, Dale T. Levy, Patrick T. Lewis, Kenneth. Lewis, Mark Steven. Libersat, Anthony R. Libersat, Kim. Licatino, Daniel Jr. Lichenstein, Donald L. Lilley, Douglas P. Lim, Chhay. Lim, Kounq. Lim, Tav Seng. Linden, Eric L. Liner, Claude J Jr. Liner, Harold. Liner, Jerry. Liner, Kevin. Liner, Michael B Sr. Liner, Morris T Jr. Liner, Morris T Sr. Liner, Tandy M. Linh, Pham. Linwood, Dolby. Lirette, Alex J Sr. Lirette, Bobby and Sheri. Lirette, Chester Patrick. Lirette, Daniel J. Lirette, Dean J. Lirette, Delvin J Jr. Lirette, Delvin Jr. Lirette, Desaire J. Lirette, Eugis P Sr. Lirette, Guy A. Lirette, Jeannie. Lirette, Kern A. Lirette, Ron C. Lirette, Russell (Chico) Jr. Lirette, Shaun Patrick. Lirette, Terry J Sr. Little, William A. Little, William Boyd. Liv, Niem S. Livaudais, Ernest J. Liverman, Harry R. LoBue, Michael Anthony Sr. Locascio, Dustin. Lockhart, William T. Lodrigue, Jimmy A. Lodrigue, Kerry. Lombardo, Joseph P. Lombas, James A Jr. Lombas, Kim D. Londrie, Harley. Long, Cao Thanh. Long, Dinh. Long, Robert. Longo, Ronald S Jr. Longwater, Ryan Heath. Loomer, Rhonda. Lopez, Celestino. Lopez, Evelio. Lopez, Harry N. Lopez, Ron. Lopez, Scott. Lopez, Stephen R Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Lord, Michael E Sr. Loupe, George Jr. Loupe, Ted. Lovell, Billy. Lovell, Bobby Jason. Lovell, Bradford John. Lovell, Charles J Jr. Lovell, Clayton. Lovell, Douglas P. Lovell, Jacob G. Lovell, Lois. Lovell, Slade M. Luke, Bernadette C. Luke, David. Luke, Dustan. Luke, Henry. Luke, Jeremy Paul. Luke, Keith J. Luke, Patrick A. Luke, Patrick J. Luke, Paul Leroy. Luke, Rudolph J. Luke, Samantha. Luke, Sidney Jr. Luke, Terry Patrick Jr. Luke, Terry Patrick Sr. Luke, Timothy. Luke, Wiltz J. Lund, Ora G. Luneau, Ferrell J. Luong, Kevin. Luong, Thu X. Luscyc, Lydia. Luscyc, Richard. Lutz, William A. Luu, Binh. Luu, Vinh. Luu, Vinh V. Ly, Bui. Ly, Hen. Ly, Hoc. Ly, Kelly D. Ly, Nu. Ly, Sa. Ly, Ven. Lyall, Rosalie. Lycett, James A. Lyons, Berton J. Lyons, Berton J Sr. Lyons, Jack. Lyons, Jerome M. Mackey, Marvin Sr. Mackie, Kevin L. Maggio, Wayne A. Magwood, Edwin Wayne. Mai, Danny V. Mai, Lang V. Mai, Tai. Mai, Trach Xuan. Maise, Rubin J. Maise, Todd. Majoue, Ernest J. Majoue, Nathan L. Malcombe, David. Mallett, Irvin Ray. Mallett, Jimmie. Mallett, Lawrence J. Mallett, Mervin B. Mallett, Rainbow. Mallett, Stephney. Malley, Ned F Jr. Mamolo, Charles H Sr. Mamolo, Romeo C Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Mamolo, Terry A. Mancera, Jesus. Manuel, Joseph R. Manuel, Shon. Mao, Chandarasy. Mao, Kim. Marcel, Michelle. Marchese, Joe Jr. Mareno, Ansley. Mareno, Brent J. Mareno, Kenneth L. Marie, Allen J. Marie, Marty. Marmande, Al. Marmande, Alidore. Marmande, Denise. Marquize, Heather. Marquize, Kip. Marris, Roy C Jr. Martin, Darren. Martin, Dean J. Martin, Dennis. Martin, Jody W. Martin, John F III. Martin, Michael A. Martin, Nora S. Martin, Rod J. Martin, Roland J Jr. Martin, Russel J Sr. Martin, Sharon J. Martin, Tanna G. Martin, Wendy. Martinez, Carl R. Martinez, Henry. Martinez, Henry Joseph. Martinez, Lupe. Martinez, Michael. Martinez, Rene J. Mason, James F Jr. Mason, Johnnie W. Mason, Luther. Mason, Mary Lois. Mason, Percy D Jr. Mason, Walter. Matherne, Anthony. Matherne, Blakland Sr. Matherne, Bradley J. Matherne, Claude I Jr. Matherne, Clifford P. Matherne, Curlis J. Matherne, Forest J. Matherne, George J. Matherne, Glenn A. Matherne, Grace L. Matherne, James C. Matherne, James J Jr. Matherne, James J Sr. Matherne, Joey A. Matherne, Keith. Matherne, Larry Jr. Matherne, Louis M Sr. Matherne, Louis Michael. Matherne, Nelson. Matherne, Thomas G. Matherne, Thomas G Jr. Matherne, Thomas Jr. Matherne, Thomas M Sr. Matherne, Wesley J. Mathews, Patrick. Mathurne, Barry. Matte, Martin J Sr. Mauldin, Johnny. Mauldin, Mary.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Mauldin, Shannon. Mavar, Mark D. Mayeux, Lonies A Jr. Mayeux, Roselyn P. Mayfield, Gary. Mayfield, Henry A Jr. Mayfield, James J III. Mayon, Allen J. Mayon, Wayne Sr. McAnespy, Henry. McAnespy, Louis. McCall, Marcus H. McCall, R Terry Sr. McCarthy, Carliss. McCarthy, Michael. McCauley, Byron Keith. McCauley, Katrina. McClantoc, Robert R and Debra. McClellan, Eugene Gardner. McCormick, Len. McCuiston, Denny Carlton. McDonald, Allan. McElroy, Harry J. McFarlain, Merlin J Jr. McGuinn, Dennis. McIntosh, James Richard. McIntyre, Michael D. McIver, John H Jr. McKendree, Roy. McKenzie, George B. McKinzie, Bobby E. McKoin, Robert. McKoin, Robert F Jr. McLendon, Jonathon S. McNab, Robert Jr. McQuaig, Don W. McQuaig, Oliver J. Medine, David P. Mehaffey, John P. Melancon, Brent K. Melancon, Neva. Melancon, Rickey. Melancon, Roland Jr. Melancon, Roland T Jr. Melancon, Sean P. Melancon, Terral J. Melancon, Timmy J. Melanson, Ozimea J III. Melerine, Angela. Melerine, Brandon T. Melerine, Claude A. Melerine, Claude A Jr. Melerine, Dean J. Melerine, Eric W Jr. Melerine, John D Sr. Melerine, Linda C. Melerine, Raymond Joseph. Melford, Daniel W Sr. Mello, Nelvin. Men, Sophin. Menendez, Wade E. Menesses, Dennis. Menesses, James H. Menesses, Jimmy. Menesses, Louis. Menge, Lionel A. Menge, Vincent J. Mercy, Dempsey. Merrick, Harold A. Merrick, Kevin Sr. Merritt, Darren Sr. Messer, Chase. Meyers, Otis J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Miarm, Soeum. Michel, Steven D. Middleton, Dan Sr. Migues, Henry. Migues, Kevin L Sr. Milam, Ricky. Miles, Ricky David. Miley, Donna J. Militello, Joseph. Miller, David W. Miller, Fletcher N. Miller, James A. Miller, Larry B. Miller, Mabry Allen Jr. Miller, Michael E. Miller, Michele K. Miller, Randy A. Miller, Rhonda E. Miller, Wayne. Millet, Leon B. Millington, Donnie. Millington, Ronnie. Millis, Moses. Millis, Raeford. Millis, Timmie Lee. Mine, Derrick. Miner, Peter G. Minh, Kha. Minh, Phuc-Truong. Mitchell, Ricky Allen. Mitchell, Todd. Mitchum, Francis Craig. Mixon, G C. Mobley, Bryan A. Mobley, Jimmy Sr. Mobley, Robertson. Mock, Frank Sr. Mock, Frankie E Jr. Mock, Jesse R II. Mock, Terry Lyn. Molero, Louis F III. Molero, Louis Frank. Molinere, Al L. Molinere, Floyd. Molinere, Roland Jr. Molinere, Stacey. Moll, Angela. Moll, Jerry J Jr. Moll, Jonathan P. Moll, Julius J. Moll, Randall Jr. Mollere, Randall. Mones, Philip J Jr. Mones, Tino. Moody, Guy D. Moore, Carl Stephen. Moore, Curtis L. Moore, Kenneth. Moore, Richard. Moore, Willis. Morales, Anthony. Morales, Clinton A. Morales, Daniel Jr. Morales, Daniel Sr. Morales, David. Morales, Elwood J Jr. Morales, Eugene J Jr. Morales, Eugene J Sr. Morales, Kimberly. Morales, Leonard L. Morales, Phil J Jr. Morales, Raul. Moran, Scott.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Moreau, Allen Joseph. Moreau, Berlin J Sr. Moreau, Daniel R. Moreau, Hubert J. Moreau, Mary. Moreau, Rickey J Sr. Morehead, Arthur B Jr. Moreno, Ansley. Morgan, Harold R. Morici, John. Morris, Herbert Eugene. Morris, Jesse A. Morris, Jesse A Sr. Morris, Preston. Morrison, Stephen D Jr. Morton, Robert A. Morvant, Keith M. Morvant, Patsy Lishman. Moschettieri, Chalam. Moseley, Kevin R. Motley, Michele. Mouille, William L. Mouton, Ashton J. Moveront, Timothy. Mund, Mark. Murphy, Denis R. Muth, Gary J Sr. Myers, Joseph E Jr. Na, Tran Van. Naccio, Andrew. Nacio, Lance M. Nacio, Noel. Nacio, Philocles J Sr. Naquin, Alton J. Naquin, Andrew J Sr. Naquin, Antoine Jr. Naquin, Autry James. Naquin, Bobby J and Sheila. Naquin, Bobby Jr. Naquin, Christine. Naquin, Dean J. Naquin, Donna P. Naquin, Earl. Naquin, Earl L. Naquin, Freddie. Naquin, Gerald. Naquin, Henry. Naquin, Irvin J. Naquin, Jerry Joseph Jr. Naquin, Kenneth J Jr. Naquin, Kenneth J Sr. Naquin, Linda L. Naquin, Lionel A Jr. Naquin, Mark D Jr. Naquin, Marty J Sr. Naquin, Milton H IV. Naquin, Oliver A. Naquin, Robert. Naquin, Roy A. Naquin, Vernon. Navarre, Curtis J. Navero, Floyd G Jr. Neal, Craig A. Neal, Roy J Jr. Neely, Bobby H. Nehlig, Raymond E Sr. Neil, Dean. Neil, Jacob. Neil, Julius. Neil, Robert J Jr. Neil, Tommy Sr. Nelson, Billy J Sr. Nelson, Deborah.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Nelson, Elisha W. Nelson, Ernest R. Nelson, Faye. Nelson, Fred H Sr. Nelson, Gordon Kent Sr. Nelson, Gordon W III. Nelson, Gordon W Jr. Nelson, John Andrew. Nelson, William Owen Jr. Nelton, Aaron J Jr. Nelton, Steven J. Nettleton, Cody. Newell, Ronald B. Newsome, Thomas E. Newton, Paul J. Nghiem, Billy. Ngo, Chuong Van. Ngo, Duc. Ngo, Hung V. Ngo, Liem Thanh. Ngo, Maxie. Ngo, The T. Ngo, Truong Dinh. Ngo, Van Lo. Ngo, Vu Hoang. Ngoc, Lam Lam. Ngu,Thoi. Nguyen, Amy. Nguyen, An Hoang. Nguyen, Andy Dung. Nguyen, Andy T. Nguyen, Anh and Thanh D Tiet. Nguyen, Ba. Nguyen, Ba Van. Nguyen, Bac Van. Nguyen, Bao Q. Nguyen, Bay Van. Nguyen, Be. Nguyen, Be. Nguyen, Be. Nguyen, Be Em. Nguyen, Bich Thao. Nguyen, Bien V. Nguyen, Binh. Nguyen, Binh Cong. Nguyen, Binh V. Nguyen, Binh Van. Nguyen, Binh Van. Nguyen, Binh Van. Nguyen, Bui Van. Nguyen, Ca Em. Nguyen, Can. Nguyen, Can Van. Nguyen, Canh V. Nguyen, Charlie. Nguyen, Chien. Nguyen, Chien Van. Nguyen, Chin. Nguyen, Chinh Van. Nguyen, Christian. Nguyen, Chuc. Nguyen, Chung. Nguyen, Chung Van. Nguyen, Chuong Hoang. Nguyen, Chuong V. Nguyen, Chuyen. Nguyen, Coolly Dinh. Nguyen, Cuong. Nguyen, Dai. Nguyen, Dan T. Nguyen, Dan Van. Nguyen, Dan Van. Nguyen, Dang.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Nguyen, Danny. Nguyen, David. Nguyen, Day Van. Nguyen, De Van. Nguyen, Den. Nguyen, Diem. Nguyen, Dien. Nguyen, Diep. Nguyen, Dinh. Nguyen, Dinh V. Nguyen, Dong T. Nguyen, Dong Thi. Nguyen, Dong X. Nguyen, Duc. Nguyen, Duc Van. Nguyen, Dung. Nguyen, Dung Anh and Xuan Duong. Nguyen, Dung Ngoc. Nguyen, Dung Van. Nguyen, Dung Van. Nguyen, Duoc. Nguyen, Duong V. Nguyen, Duong Van. Nguyen, Duong Xuan. Nguyen, Francis N. Nguyen, Frank. Nguyen, Gary. Nguyen, Giang T. Nguyen, Giang Truong. Nguyen, Giau Van. Nguyen, Ha T. Nguyen, Ha Van. Nguyen, Hai Van. Nguyen, Hai Van. Nguyen, Han Van. Nguyen, Han Van. Nguyen, Hang. Nguyen, Hanh T. Nguyen, Hao Van. Nguyen, Harry H. Nguyen, Henri Hiep. Nguyen, Henry-Trang. Nguyen, Hien. Nguyen, Hien V. Nguyen, Hiep. Nguyen, Ho. Nguyen, Ho V. Nguyen, Hoa. Nguyen, Hoa. Nguyen, Hoa N. Nguyen, Hoa Van. Nguyen, Hoang. Nguyen, Hoang. Nguyen, Hoang T. Nguyen, Hoi. Nguyen, Hon Xuong. Nguyen, Huan. Nguyen, Hung. Nguyen, Hung. Nguyen, Hung. Nguyen, Hung M. Nguyen, Hung Manh. Nguyen, Hung Van. Nguyen, Hung-Joseph. Nguyen, Huu Nghia. Nguyen, Hy Don N. Nguyen, Jackie Tin. Nguyen, James. Nguyen, James N. Nguyen, Jefferson. Nguyen, Jennifer. Nguyen, Jimmy. Nguyen, Jimmy.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Nguyen, Joachim. Nguyen, Joe. Nguyen, John R. Nguyen, John Van. Nguyen, Johnny. Nguyen, Joseph Minh. Nguyen, Kenny Hung Mong. Nguyen, Kevin. Nguyen, Khai. Nguyen, Khanh. Nguyen, Khanh and Viet Dinh. Nguyen, Khanh Q. Nguyen, Khiem. Nguyen, Kien Phan. Nguyen, Kim. Nguyen, Kim Mai. Nguyen, Kim Thoa. Nguyen, Kinh V. Nguyen, Lai. Nguyen, Lai. Nguyen, Lai Tan. Nguyen, Lam. Nguyen, Lam Van. Nguyen, Lam Van. Nguyen, Lam Van. Nguyen, Lan. Nguyen, Lang. Nguyen, Lang. Nguyen, Lanh. Nguyen, Lap Van. Nguyen, Lap Van. Nguyen, Le. Nguyen, Lien and Hang Luong. Nguyen, Lien Thi. Nguyen, Linda Oan. Nguyen, Linh Thi. Nguyen, Linh Van. Nguyen, Lintt Danny. Nguyen, Lluu. Nguyen, Loc. Nguyen, Loi. Nguyen, Loi. Nguyen, Long Phi. Nguyen, Long T. Nguyen, Long Viet. Nguyen, Luom T. Nguyen, Mai Van. Nguyen, Man. Nguyen, Mao-Van. Nguyen, Mary. Nguyen, Mary. Nguyen, Melissa. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh Ngoc. Nguyen, Minh Van. Nguyen, Moot. Nguyen, Mui Van. Nguyen, Mung T. Nguyen, Muoi. Nguyen, My Le Thi. Nguyen, My Tan. Nguyen, My V. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nancy. Nguyen, Nancy. Nguyen, Nghi.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Nguyen, Nghi Q. Nguyen, Nghia. Nguyen, Nghiep. Nguyen, Ngoc Tim. Nguyen, Ngoc Van. Nguyen, Nguyet. Nguyen, Nhi. Nguyen, Nho Van. Nguyen, Nina. Nguyen, Nuong. Nguyen, Peter. Nguyen, Peter Thang. Nguyen, Peter V. Nguyen, Phe. Nguyen, Phong. Nguyen, Phong Ngoc. Nguyen, Phong T. Nguyen, Phong Xuan. Nguyen, Phu Huu. Nguyen, Phuc. Nguyen, Phuoc H. Nguyen, Phuoc Van. Nguyen, Phuong. Nguyen, Phuong. Nguyen, Quang. Nguyen, Quang. Nguyen, Quang Dang. Nguyen, Quang Dinh. Nguyen, Quang Van. Nguyen, Quoc Van. Nguyen, Quyen Minh. Nguyen, Quyen T. Nguyen, Quyen-Van. Nguyen, Ran T. Nguyen, Randon. Nguyen, Richard. Nguyen, Richard Nghia. Nguyen, Rick Van. Nguyen, Ricky Tinh. Nguyen, Roe Van. Nguyen, Rose. Nguyen, Sam. Nguyen, Sandy Ha. Nguyen, Sang Van. Nguyen, Sau V. Nguyen, Si Ngoc. Nguyen, Son. Nguyen, Son Thanh. Nguyen, Son Van. Nguyen, Song V. Nguyen, Steve. Nguyen, Steve Q. Nguyen, Steven Giap. Nguyen, Sung. Nguyen, Tai. Nguyen, Tai The. Nguyen, Tai Thi. Nguyen, Tam. Nguyen, Tam Minh. Nguyen, Tam Thanh. Nguyen, Tam V. Nguyen, Tam Van. Nguyen, Tan. Nguyen, Ten Tan. Nguyen, Thach. Nguyen, Thang. Nguyen, Thanh. Nguyen, Thanh. Nguyen, Thanh. Nguyen, Thanh Phuc. Nguyen, Thanh V. Nguyen, Thanh Van. Nguyen, Thanh Van.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Nguyen, Thanh Van. Nguyen, Thanh Van. Nguyen, Thao. Nguyen, Thi Bich Hang. Nguyen, Thiet. Nguyen, Thiet. Nguyen, Tho Duke. Nguyen, Thoa D. Nguyen, Thoa Thi. Nguyen, Thomas. Nguyen, Thu. Nguyen, Thu and Rose. Nguyen, Thu Duc. Nguyen, Thu Van. Nguyen, Thuan. Nguyen, Thuan. Nguyen, Thuong. Nguyen, Thuong Van. Nguyen, Thuy. Nguyen, Thuyen. Nguyen, Thuyen. Nguyen, Tinh. Nguyen, Tinh Van. Nguyen, Toan. Nguyen, Toan Van. Nguyen, Tommy. Nguyen, Tony. Nguyen, Tony. Nguyen, Tony. Nguyen, Tony D. Nguyen, Tony Hong. Nguyen, Tony Si. Nguyen, Tra. Nguyen, Tra. Nguyen, Tracy T. Nguyen, Tri D. Nguyen, Trich Van. Nguyen, Trung Van. Nguyen, Tu Van. Nguyen, Tuan. Nguyen, Tuan A. Nguyen, Tuan H. Nguyen, Tuan Ngoc. Nguyen, Tuan Q. Nguyen, Tuan Van. Nguyen, Tung. Nguyen, Tuyen Duc. Nguyen, Tuyen Van. Nguyen, Ty and Ngoc Ngo. Nguyen, Van H. Nguyen, Van Loi. Nguyen, Vang Van. Nguyen, Viet. Nguyen, Viet. Nguyen, Viet V. Nguyen, Viet Van. Nguyen, Vinh Van. Nguyen, Vinh Van. Nguyen, VT. Nguyen, Vu Minh. Nguyen, Vu T. Nguyen, Vu Xuan. Nguyen, Vui. Nguyen, Vuong V. Nguyen, Xuong Kim. Nhan, Tran Quoc. Nhon, Seri. Nichols, Steve Anna. Nicholson, Gary. Nixon, Leonard. Noble, Earl. Noland, Terrel W.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Normand, Timothy. Norris, Candace P. Norris, John A. Norris, Kenneth L. Norris, Kevin J. Nowell, James E. Noy, Phen. Nunez, Conrad. Nunez, Jody. Nunez, Joseph Paul. Nunez, Randy. Nunez, Wade Joseph. Nyuyen, Toan. Oberling, Darryl. O'Blance, Adam. O'Brien, Gary S. O'Brien, Mark. O'Brien, Michele. Ogden, John M. Oglesby, Henry. Oglesby, Phyllis. O'Gwynn, Michael P Sr. Ohmer, Eva G. Ohmer, George J. Olander, Hazel. Olander, Rodney. Olander, Roland J. Olander, Russell J. Olander, Thomas. Olano, Kevin. Olano, Owen J. Olano, Shelby F. Olds, Malcolm D Jr. Olinde, Wilfred J Jr. Oliver, Charles. O'Neil, Carey. Oracoy, Brad R. Orage, Eugene. Orlando, Het. Oteri, Robert F. Oubre, Faron P. Oubre, Thomas W. Ourks, SokHoms K. Owens, Larry E. Owens, Sheppard. Owens, Timothy. Pacaccio, Thomas Jr. Padgett, Kenneth J. Palmer, Gay Ann P. Palmer, John W. Palmer, Mack. Palmisano, Daniel P. Palmisano, Dwayne Jr. Palmisano, Kim. Palmisano, Larry J. Palmisano, Leroy J. Palmisano, Robin G. Pam, Phuong Bui. Parfait, Antoine C Jr. Parfait, Jerry Jr. Parfait, John C. Parfait, Joshua K. Parfait, Mary F. Parfait, Mary S. Parfait, Olden G Jr. Parfait, Robert C Jr. Parfait, Robert C Sr. Parfait, Rodney. Parfait, Shane A. Parfait, Shelton J. Parfait, Timmy J. Parker, Clyde A. Parker, Franklin L.

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			Parker, Paul A. Parker, Percy Todd. Parks, Daniel Duane. Parks, Ellery Doyle Jr. Parrett, Joseph D Jr. Parria, Danny. Parria, Gavin C Sr. Parria, Gillis F Jr. Parria, Gillis F Sr. Parria, Jerry D. Parria, Kip G. Parria, Lionel J Sr. Parria, Louis III. Parria, Louis J Sr. Parria, Louis Jr. Parria, Michael. Parria, Ronald. Parria, Ross. Parria, Troy M. Parrish, Charles. Parrish, Walter L. Passmore, Penny. Pate, Shane. Paterbaugh, Richard. Patingo, Roger D. Paul, Robert Emmett. Payne, John Francis. Payne, Stuart. Peatross, David A. Pelas, James Curtis. Pelas, Jeffery. Pellegrin, Corey P. Pellegrin, Curlynn. Pellegrin, James A Jr. Pellegrin, Jordey. Pellegrin, Karl. Pellegrin, Karl J. Pellegrin, Randy. Pellegrin, Randy Sr. Pellegrin, Rodney J Sr. Pellegrin, Samuel. Pellegrin, Troy Sr. Peltier, Clyde. Peltier, Rodney J. Pena, Bartolo Jr. Pena, Israel. Pendarvis, Gracie. Pennison, Elaine. Pennison, Milton G. Pequeno, Julius. Percle, David P. Perez, Allen M. Perez, David J. Perez, David P. Perez, Derek. Perez, Edward Jr. Perez, Henry Jr. Perez, Joe B. Perez, Tilden A Jr. Perez, Warren A Jr. Perez, Warren A Sr. Perez, Wesley. Perrin, Dale. Perrin, David M. Perrin, Edward G Sr. Perrin, Errol Joseph Jr. Perrin, Jerry J. Perrin, Kenneth V. Perrin, Kevin. Perrin, Kline J Sr. Perrin, Kurt M. Perrin, Michael. Perrin, Michael A.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Perrin, Murphy P. Perrin, Nelson C Jr. Perrin, Pershing J Jr. Perrin, Robert. Perrin, Tim J. Perrin, Tony. Persohn, William T. Peshoff, Kirk Lynn. Pete, Alfred F Jr. Pete, Alfred F Sr. Pfleeeger, William A. Pham, An V. Pham, Anh My. Pham, Bob. Pham, Cho. Pham, Cindy. Pham, David. Pham, Dung. Pham, Dung Phuoc. Pham, Dung Phuoc. Pham, Duong Van. Pham, Gai. Pham, Hai. Pham, Hai Hong. Pham, Hien. Pham, Hien C. Pham, Hiep. Pham, Hieu. Pham, Huan Van. Pham, Hung. Pham, Hung V. Pham, Hung V. Pham, Huynh. Pham, John. Pham, Johnny. Pham, Joseph S. Pham, Kannin. Pham, Nga T. Pham, Nhung T. Pham, Osmond. Pham, Paul P. Pham, Phong-Thanh. Pham, Phung. Pham, Quoc V. Pham, Steve Ban. Pham, Steve V. Pham, Thai Van. Pham, Thai Van. Pham, Thanh. Pham, Thanh. Pham, Thanh V. Pham, Thinh. Pham, Thinh V. Pham, Tommy V. Pham, Tran and Thu Quang. Pham, Ut Van. Phan, Anh Thi. Phan, Banh Van. Phan, Cong Van. Phan, Dan T. Phan, Hoang. Phan, Hung Thanh. Phan, Johnny. Phan, Lam. Phan, Luyen Van. Phan, Nam V. Phan, Thong. Phan, Tien V. Phan, Toan. Phan, Tu Van. Phat, Lam Mau. Phelps, John D. Phillips, Bruce A.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Phillips, Danny D. Phillips, Gary. Phillips, Harry Louis. Phillips, James C Jr. Phillips, Kristina W. Phipps, AW. Phonthaasa, Khaolop. Phorn, Phen. Pickett, Kathy. Picou, Calvin Jr. Picou, Gary M. Picou, Jennifer. Picou, Jerome J. Picou, Jordan J. Picou, Randy John. Picou, Ricky Sr. Picou, Terry. Pierce, Aaron. Pierce, Dean. Pierce, Elwood. Pierce, Imogene. Pierce, Stanley. Pierce, Taffie Boone. Pierre, Ivy. Pierre, Joseph. Pierre, Joseph C Jr. Pierre, Paul J. Pierre, Ronald J. Pierron, Jake. Pierron, Patsy H. Pierron, Roger D. Pinell, Ernie A. Pinell, Harry J Jr. Pinell, Jody J. Pinell, Randall James. Pinnell, Richard J. Pinnell, Robert. Pitre, Benton J. Pitre, Carol. Pitre, Claude A Sr. Pitre, Elrod. Pitre, Emily B. Pitre, Glenn P. Pitre, Herbert. Pitre, Jeannie. Pitre, Leo P. Pitre, Robert Jr. Pitre, Robin. Pitre, Ryan P. Pitre, Ted J. Pittman, Roger. Pizani, Bonnie. Pizani, Craig. Pizani, Jane. Pizani, Terrill J. Pizani, Terry M. Pizani, Terry M Jr. Plaisance, Arthur E. Plaisance, Burgess. Plaisance, Darren. Plaisance, Dean J Sr. Plaisance, Dorothy B. Plaisance, Dwayne. Plaisance, Earl J Jr. Plaisance, Errance H. Plaisance, Evans P. Plaisance, Eves A III. Plaisance, Gideons. Plaisance, Gillis S. Plaisance, Henry A Jr. Plaisance, Jacob. Plaisance, Jimmie J. Plaisance, Joyce.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Plaisance, Keith. Plaisance, Ken G. Plaisance, Lawrence J. Plaisance, Lucien Jr. Plaisance, Peter A Sr. Plaisance, Peter Jr. Plaisance, Richard J. Plaisance, Russel P. Plaisance, Russell P Sr. Plaisance, Thomas. Plaisance, Thomas J. Plaisance, Wayne P. Plaisance, Whitney III. Plork, Phan. Poche, Glenn J Jr. Poche, Glenn J Sr. Pockrus, Gerald. Poencot, Russell Jr. Poillion, Charles A. Polito, Gerald. Polkey, Gary J. Polkey, Richard R Jr. Polkey, Ronald. Polkey, Shawn Michael. Pollet, Lionel J Sr. Pomgoria, Mario. Ponce, Ben. Ponce, Lewis B. Poon, Raymond. Pope, Robert. Popham, Winford A. Poppell, David M. Porche, Ricky J. Portier, Bobby. Portier, Chad. Portier, Corinne L. Portier, Penelope J. Portier, Robbie. Portier, Russel A Sr. Portier, Russell. Potter, Hubert Edward Jr. Potter, Robert D. Potter, Robert J. Pounds, Terry Wayne. Powers, Clyde T. Prejean, Dennis J. Price, Carl. Price, Curtis. Price, Edwin J. Price, Franklin J. Price, George J Sr. Price, Norris J Sr. Price, Steve J Jr. Price, Timmy T. Price, Wade J. Price, Warren J. Prihoda, Steve. Primeaux, Scott. Pritchard, Dixie J. Pritchard, James Ross Jr. Prosperie, Claude J Jr. Prosperie, Myron. Prout, Rollen. Prout, Sharonski K. Prum, Thou. Pugh, Charles D Jr. Pugh, Charles Sr. Pugh, Cody. Pugh, Deanna. Pugh, Donald. Pugh, Nickolas. Punch, Alvin Jr. Punch, Donald J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Punch, Todd M. Punch, Travis J. Purata, Maria. Purse, Emil. Purvis, George. Quach, Duc. Quach, James D. Quach, Joe. Quach, Si Tan. Quinn, Dora M. Racca, Charles. Racine, Sylvan P Jr. Radulic, Igor. Ragas, Albert G. Ragas, Gene. Ragas, John D. Ragas, Jonathan. Ragas, Richard A. Ragas, Ronda S. Ralph, Lester B. Ramirez, Alfred J Jr. Randazzo, John A Jr. Randazzo, Rick A. Rando, Stanley D. Ranko, Ellis Gerald. Rapp, Dwayne. Rapp, Leroy and Sedonia. Rawlings, John H Sr. Rawlings, Ralph E. Rawls, Norman E. Ray, Leo. Ray, William C Jr. Raynor, Steven Earl. Readenour, Kelty O. Reagan, Roy. Reason, Patrick W. Reaux, Paul S Sr. Reaves, Craig A. Reaves, Laten. Rebert, Paul J Sr. Rebert, Steve M Jr. Rebstock, Charles. Rector, Lance Jr. Rector, Warren L. Redden, Yvonne. Regnier, Leoncea B. Remondet, Garland Jr. Renard, Lanny. Reno, Edward. Reno, George C. Reno, George H. Reno, George T. Reno, Harry. Revell, Ben David. Reyes, Carlton. Reyes, Dwight D Sr. Reynon, Marcello Jr. Rhodes, Randolph N. Rhoto, Christopher L. Ribardi, Frank A. Rich, Wanda Heafner. Richard, Bruce J. Richard, David L. Richard, Edgar J. Richard, James Ray. Richard, Melissa. Richard, Randall K. Richardson, James T. Richert, Daniel E. Richo, Earl Sr. Richoux, Dudley Donald Jr. Richoux, Irvin J Jr. Richoux, Judy.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Richoux, Larry. Richoux, Mary A. Riego, Raymond A. Riffle, Josiah B. Rigaud, Randall Ryan. Riggs, Jeffrey B. Riley, Jackie Sr. Riley, Raymond. Rinkus, Anthony J III. Rios, Amado. Ripp, Norris M. Robbins, Tony. Robert, Dan S. Roberts, Michael A. Robertson, Kevin. Robeson, Richard S Jr. Robichaux, Craig J. Robin, Alvin G. Robin, Cary Joseph. Robin, Charles R III. Robin, Danny J. Robin, Donald. Robin, Floyd A. Robin, Kenneth J Sr. Robin, Ricky R. Robinson, Johnson P III. Robinson, Walter. Roccaforte, Clay. Rodi, Dominick R. Rodi, Rhonda. Rodrigue, Brent J. Rodrigue, Carrol Sr. Rodrigue, Glenn. Rodrigue, Lerlene. Rodrigue, Reggie Sr. Rodrigue, Sonya. Rodrigue, Wayne. Rodriguez, Barry. Rodriguez, Charles V Sr. Rodriguez, Gregory. Rodriguez, Jesus. Rodriguez, Joseph C Jr. Roeum, Orn. Rogers, Barry David. Rogers, Chad. Rogers, Chad M. Rogers, Kevin J. Rogers, Nathan J. Rojas, Carlton J Sr. Rojas, Curtis Sr. Rojas, Dennis J Jr. Rojas, Dennis J Sr. Rojas, Gordon V. Rojas, Kerry D. Rojas, Kerry D Jr. Rojas, Randy J Sr. Rojas, Raymond J Jr. Roland, Brad. Roland, Mathias C. Roland, Vincent. Rollins, Theresa. Rollo, Wayne A. Rome, Victor J IV. Romero, D H. Romero, Kardel J. Romero, Norman. Romero, Philip J. Ronquille, Glenn. Ronquille, Norman C. Ronquillo, Earl. Ronquillo, Richard J. Ronquillo, Timothy. Roseburrrough, Charles R Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Ross, Dorothy. Ross, Edward Danny Jr. Ross, Leo L. Ross, Robert A. Roth, Joseph F Jr. Roth, Joseph M Jr. Rotolo, Carolyn. Rotolo, Feliz. Rouse, Jimmy. Roussel, Michael D Jr. Roy, Henry Lee Jr. Rudolph, Chad A. Ruiz, Donald W. Ruiz, James L. Ruiz, Paul E. Ruiz, Paul R. Russell, Bentley R. Russell, Casey. Russell, Daniel. Russell, James III. Russell, Julie Ann. Russell, Michael J. Russell, Nicholas M. Russell, Paul. Rustick, Kenneth. Ruttley, Adrian K. Ruttley, Ernest T Jr. Ruttley, JT. Ryan, James C Sr. Rybiski, Rhebb R. Ryder, Luther V. Sadler, Stewart. Sagnes, Everett. Saha, Amanda K. Saling, Don M. Saltalamacchia, Preston J. Saltalamacchia, Sue A. Salvato, Lawrence Jr. Samanie, Caroll J. Samanie, Frank J. Samsome, Don. Sanamo, Troy P. Sanchez, Augustine. Sanchez, Jeffery A. Sanchez, Juan. Sanchez, Robert A. Sanders, William Shannon. Sandras, R J. Sandras, R J Jr. Sandrock, Roy R III. Santini, Lindberg W Jr. Santiny, James. Santiny, Patrick. Sapia, Carroll J Jr. Sapia, Eddie J Jr. Sapia, Willard. Saturday, Michael Rance. Sauce, Carlton Joseph. Sauce, Joseph C Jr. Saucier, Houston J. Sauls, Russell. Savage, Malcolm H. Savant, Raymond. Savoie, Allen. Savoie, Brent T. Savoie, James. Savoie, Merlin F Jr. Savoie, Reginald M II. Sawyer, Gerald. Sawyer, Rodney. Scarabin, Clifford. Scarabin, Michael J. Schaffer, Kelly.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Schaubhut, Curry A. Schellinger, Lester B Jr. Schexnaydre, Michael. Schirmer, Robert Jr. Schjott, Joseph J Sr. Schlindwein, Henry. Schmit, Paul A Jr. Schmit, Paul A Sr. Schmit, Victor J Jr. Schouest, Ellis J III. Schouest, Ellis Jr. Schouest, Juston. Schouest, Mark. Schouest, Noel. Schrimpf, Robert H Jr. Schultz, Troy A. Schwartz, Sidney. Scott, Aaron J. Scott, Audie B. Scott, James E III. Scott, Milford P. Scott, Paul. Seabrook, Terry G. Seal, Charles T. Seal, Joseph G. Seaman, Garry. Seaman, Greg. Seaman, Ollie L Jr. Seaman, Ollie L Sr. Seang, Meng. Sehon, Robert Craig. Sekul, Morris G. Sekul, S George. Sellers, Isaac Charles. Seng, Sophan. Serigne, Adam R. Serigne, Elizabeth. Serigne, James J III. Serigne, Kimmie J. Serigne, Lisa M. Serigne, Neil. Serigne, O'Neil N. Serigne, Richard J Sr. Serigne, Rickey N. Serigne, Ronald Raymond. Serigne, Ronald Roch. Serigne, Ross. Serigny, Gail. Serigny, Wayne A. Serpas, Lenny Jr. Sessions, William O III. Sessions, William O Jr. Sevel, Michael D. Sevin, Carl Anthony. Sevin, Earline. Sevin, Janell A. Sevin, Joey. Sevin, Nac J. Sevin, O'Neil and Symantha. Sevin, Phillip T. Sevin, Shane. Sevin, Shane Anthony. Sevin, Stanley J. Sevin, Willis. Seymour, Janet A. Shackelford, David M. Shaffer, Curtis E. Shaffer, Glynnon D. Shay, Daniel A. Shilling, Jason. Shilling, L E. Shugars, Robert L. Shutt, Randy.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Sifuentes, Esteban. Sifuentes, Fernando. Silver, Curtis A Jr. Simon, Curnis. Simon, John. Simon, Leo. Simpson, Mark. Sims, Donald L. Sims, Mike. Singley, Charlie Sr. Singley, Glenn. Singley, Robert Joseph. Sirgo, Jace. Sisung, Walter. Sisung, Walter Jr. Skinner, Gary M Sr. Skinner, Richard. Skipper, Malcolm W. Skrmetta, Martin J. Smelker, Brian H. Smith, Brian. Smith, Carl R Jr. Smith, Clark W. Smith, Danny. Smith, Danny M Jr. Smith, Donna. Smith, Elmer T Jr. Smith, Glenda F. Smith, James E. Smith, Margie T. Smith, Mark A. Smith, Nancy F. Smith, Raymond C Sr. Smith, Tim. Smith, Walter M Jr. Smith, William T. Smithwick, Ted Wayne. Smoak, Bill. Smoak, William W III. Snell, Erick. Snodgrass, Sam. Soeung, Phat. Soileau, John C Sr. Sok, Kheng. Sok, Montha. Sok, Nhip. Solet, Darren. Solet, Donald M. Solet, Joseph R. Solet, Raymond J. Solorzano, Marilyn. Son, Kim. Son, Sam Nang. Son, Samay. Son, Thuong Cong. Soprano, Daniel. Sork, William. Sou, Mang. Soudelier, Louis Jr. Soudelier, Shannon. Sour, Yem Kim. Southerland, Robert. Speir, Barbara Kay. Spell, Jeffrey B. Spell, Mark A. Spellmeyer, Joel F Sr. Spencer, Casey. Spiers, Donald A. Sprinkle, Avery M. Sprinkle, Emery Shelton Jr. Sprinkle, Joseph Warren. Squarsich, Kenneth J. Sreiy, Siphon.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			St Amant, Dana A. St Ann, Mr and Mrs Jerome K. St Pierre, Darren. St Pierre, Scott A. Staves, Patrick. Stechmann, Chad. Stechmann, Karl J. Stechmann, Todd. Steele, Arnold D Jr. Steele, Henry H III. Steen, Carl L. Steen, James D. Steen, Kathy G. Stein, Norris J Jr. Stelly, Adlar. Stelly, Carl A. Stelly, Chad P. Stelly, Delores. Stelly, Sandrus J Sr. Stelly, Sandrus Jr. Stelly, Toby J. Stelly, Veronica G. Stelly, Warren. Stephenson, Louis. Stevens, Alvin. Stevens, Curtis D. Stevens, Donald. Stevens, Glenda. Stewart, Chester Jr. Stewart, Derald. Stewart, Derek. Stewart, Fred. Stewart, Jason F. Stewart, Ronald G. Stewart, William C. Stiffler, Thanh. Stipelcovich, Lawrence L. Stipelcovich, Todd J. Stockfett, Brenda. Stokes, Todd. Stone-Rinkus, Pamela. Strader, Steven R. Strickland, Kenneth. Strickland, Rita G. Stuart, James Vernon. Stutes, Rex E. Sulak, Billy W. Sun, Hong Sreng. Surmik, Donald D. Swindell, Keith M. Sylve, Dennis A. Sylve, James L. Sylve, Nathan. Sylve, Scott. Sylvesr, Paul A. Ta, Ba Van. Ta, Chris. Tabb, Calvin. Taliancich, Andrew. Taliancich, Ivan. Taliancich, Joseph M. Taliancich, Srecka. Tan, Ho Dung. Tan, Hung. Tan, Lan T. Tan, Ngo The. Tang, Thanh. Tanner, Robert Charles. Taravella, Raymond. Tassin, Alton J. Tassin, Keith P. Tate, Archie P. Tate, Terrell.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Tauzier, Kevin M. Taylor, Doyle L. Taylor, Herman R. Taylor, Herman R Jr. Taylor, J P Jr. Taylor, John C. Taylor, Leander J Sr. Taylor, Leo Jr. Taylor, Lewis. Taylor, Nathan L. Taylor, Robert L. Taylor, Robert M. Teap, Phal. Tek, Heng. Templat, Paul. Terluin, John L III. Terrebonne, Adrein Scott. Terrebonne, Alphonse J. Terrebonne, Alton S Jr. Terrebonne, Alton S Sr. Terrebonne, Carol. Terrebonne, Carroll. Terrebonne, Chad. Terrebonne, Chad Sr. Terrebonne, Daniel J. Terrebonne, Donavon J. Terrebonne, Gary J Sr. Terrebonne, Jimmy Jr. Terrebonne, Jimmy Sr. Terrebonne, Kline A. Terrebonne, Lanny. Terrebonne, Larry F Jr. Terrebonne, Scott. Terrebonne, Steven. Terrebonne, Steven. Terrebonne, Toby J. Terrel, Chad J Sr. Terrell, C Todd. Terrio, Brandon James. Terrio, Harvey J Jr. Terry, Eloise P. Tesvich, Kuzma D. Thac, Dang Van. Thach, Phuong. Thai, Huynh Tan. Thai, Paul. Thai, Thomas. Thanh, Thien. Tharpe, Jack. Theriot, Anthony. Theriot, Carroll A Jr. Theriot, Clay J Jr. Theriot, Craig A. Theriot, Dean P. Theriot, Donnie. Theriot, Jeffery C. Theriot, Larry J. Theriot, Lynn. Theriot, Mark A. Theriot, Roland P Jr. Theriot, Wanda J. Thibodeaux, Jared. Thibodeaux, Bart James. Thibodeaux, Brian A. Thibodeaux, Brian M. Thibodeaux, Calvin A Jr. Thibodeaux, Fay F. Thibodeaux, Glenn P. Thibodeaux, Jeffrey. Thibodeaux, Jonathan. Thibodeaux, Josephine. Thibodeaux, Keith. Thibodeaux, Tony J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Thibodeaux, Warren J. Thidobaux, James V Sr. Thiet, Tran. Thomas, Alvin. Thomas, Brent. Thomas, Dally S. Thomas, Janie G. Thomas, John Richard. Thomas, Kenneth Ward. Thomas, Monica P. Thomas, Ralph L Jr. Thomas, Ralph Lee Jr. Thomas, Randall. Thomas, Robert W. Thomas, Willard N Jr. Thomassie, Gerard. Thomassie, Nathan A. Thomassie, Philip A. Thomassie, Ronald J. Thomassie, Tracy Joseph. Thompson, Bobbie. Thompson, David W. Thompson, Edwin A. Thompson, George. Thompson, James D Jr. Thompson, James Jr. Thompson, John E. Thompson, John R. Thompson, Randall. Thompson, Sammy. Thompson, Shawn. Thong, R. Thonn, John J Jr. Thonn, Victor J. Thorpe, Robert Lee Jr. Thurman, Charles E. Tiet, Thanh Duc. Tilghman, Gene E. Tillett, Billy Carl. Tillman, Lewis A Jr. Tillman, Timothy P and Yvonne M. Tillotson, Pat. Tinney, Mark A. Tisdale, Georgia W. Tiser, Oscar. Tiser, Thomas C Jr. Tiser, Thomas C Sr. To, Cang Van. To, Du Van. Todd, Fred Noel. Todd, Patricia J. Todd, Rebecca G. Todd, Robert C and Patricia J. Todd, Vonnice Frank Jr. Tompkins, Gerald Paul II. Toney, George Jr. Tong, Hai V. Tong, Linh C. Toomer, Christina Abbott. Toomer, Christy. Toomer, Frank G Jr. Toomer, Jeffrey E. Toomer, Kenneth. Toomer, Lamar K. Toomer, Larry Curtis and Tina. Toomer, William Kemp. Torrible, David P. Torrible, Jason. Touchard, Anthony H. Touchard, John B Jr. Touchard, Paul V Jr. Touchet, Eldridge III. Touchet, Eldridge Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Toups, Anthony G. Toups, Bryan. Toups, Jeff. Toups, Jimmie J. Toups, Kim. Toups, Manuel. Toups, Ted. Toups, Tommy. Toureau, James. Tower, H Melvin. Townsend, Harmon Lynn. Townsend, Marion Brooks. Tra, Hop T. Trabeau, James D. Trahan, Allen A Jr. Trahan, Alvin Jr. Trahan, Druby. Trahan, Dudley. Trahan, Elie J. Trahan, Eric J. Trahan, James. Trahan, Karen C. Trahan, Lynn P Sr. Trahan, Ricky. Trahan, Ronald J. Trahan, Tracey L. Trahan, Wayne Paul. Tran, Allen Hai. Tran, Andana. Tran, Anh. Tran, Anh. Tran, Anh N. Tran, Bay V. Tran, Bay Van. Tran, Binh. Tran, Binh Van. Tran, Ca Van. Tran, Cam Van. Tran, Chau V. Tran, Chau Van. Tran, Chau Van. Tran, Chi T. Tran, Christina Phuong. Tran, Chu V. Tran, Cuong. Tran, Cuong. Tran, Danny Duc. Tran, Den. Tran, Dien. Tran, Dinh M. Tran, Dinh Q. Tran, Doan. Tran, Dung Van. Tran, Duoc. Tran, Duoc. Tran, Duong. Tran, Eric. Tran, Francis. Tran, Francis. Tran, Giang. Tran, Giao. Tran, Ha Mike. Tran, Hai. Tran, Hien H. Tran, Hiep Phuoc. Tran, Hieu. Tran, Hoa. Tran, Hoa. Tran, Hue T. Tran, Huey. Tran, Hung. Tran, Hung. Tran, Hung.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Tran, Hung P. Tran, Hung Van. Tran, Hung Van. Tran, Hung Viet. Tran, James N. Tran, John. Tran, Johnny Dinh. Tran, Joseph. Tran, Joseph T. Tran, Khan Van. Tran, Khanh. Tran, Kim. Tran, Kim Chi Thi. Tran, Lan Tina. Tran, Le and Phat Le. Tran, Leo Van. Tran, Loan. Tran, Long. Tran, Long Van. Tran, Luu Van. Tran, Ly. Tran, Ly Van. Tran, Mai Thi. Tran, Mary. Tran, Miel Van. Tran, Mien. Tran, Mike. Tran, Mike Dai. Tran, Minh Huu. Tran, Muoi. Tran, My T. Tran, Nam Van. Tran, Nang Van. Tran, Nghia and T Le Banh. Tran, Ngoc. Tran, Nhanh Van. Tran, Nhieu T. Tran, Nhieu Van. Tran, Nho. Tran, Peter. Tran, Phu Van. Tran, Phuc D. Tran, Phuc V. Tran, Phung. Tran, Quan Van. Tran, Quang Quang. Tran, Quang T. Tran, Quang Van. Tran, Qui V. Tran, Quy Van. Tran, Ran Van. Tran, Sarah T. Tran, Sau. Tran, Scotty. Tran, Son. Tran, Son Van. Tran, Steven Tuan. Tran, Tam. Tran, Te Van. Tran, Than. Tran, Thang Van. Tran, Thanh. Tran, Thanh. Tran, Thanh Van. Tran, Theresa. Tran, Thi. Tran, Thich Van. Tran, Thien. Tran, Thien Van. Tran, Thiet. Tran, Tommy. Tran, Tony. Tran, Tri.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Tran, Trinh. Tran, Trung. Tran, Trung Van. Tran, Tu. Tran, Tuan. Tran, Tuan. Tran, Tuan Minh. Tran, Tuong Van. Tran, Tuyet Thi. Tran, Van T. Tran, Victor. Tran, Vinh. Tran, Vinh Q. Tran, Vinh Q. Tran, Vui Kim. Trang, Tan. Trapp, Tommy. Treadaway, Michael. Tregle, Curtis. Treloar, William Paul. Treuil, Gary J. Trevino, Manuel. Treybig, E H "Buddy" Jr. Triche, Donald G. Trieu, Hiep and Jackie. Trieu, Hung Hoa. Trieu, Jasmine and Ly. Trieu, Lorie and Tam. Trieu, Tam. Trinh, Christopher B. Trinh, Philip P. Trosclair, Clark K. Trosclair, Clark P. Trosclair, Eugene P. Trosclair, James J. Trosclair, Jerome. Trosclair, Joseph. Trosclair, Lori. Trosclair, Louis V. Trosclair, Patricia. Trosclair, Randy. Trosclair, Ricky. Trosclair, Wallace Sr. Truong, Andre. Truong, Andre V. Truong, Be Van. Truong, Benjamin. Truong, Dac. Truong, Huan. Truong, Kim. Truong, Nhut Van. Truong, Steve. Truong, Tham T. Truong, Thanh Minh. Truong, Them Van. Truong, Thom. Truong, Timmy. Trutt, George W Sr. Trutt, Wanda. Turlich, Mervin A. Turner, Calvin L. Tyre, John. Upton, Terry R. Valentino, J G Jr. Valentino, James. Vallot, Christopher A. Vallot, Nancy H. Valure, Hugh P. Van Alsbury, Charles. Van Gordstnoven, Jean J. Van Nguyen, Irving. Van, Than. Van, Vui.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Vanacor, Kathy D. Vanacor, Malcolm J Sr. Vanicor, Bobbie. VanMeter, Matthew T. VanMeter, William Earl. Varney, Randy L. Vath, Raymond S. Veasel, William E III. Vegas, Brien J. Vegas, Percy J. Vegas, Terry J. Vegas, Terry J Jr. Vegas, Terry Jr. Vela, Peter. Verdin, Aaron. Verdin, Av. Verdin, Bradley J. Verdin, Brent A. Verdin, Charles A. Verdin, Charles E. Verdin, Coy P. Verdin, Curtis A Jr. Verdin, Delphine. Verdin, Diana A. Verdin, Ebro W. Verdin, Eric P. Verdin, Ernest Joseph Sr. Verdin, Jeff C. Verdin, Jeffrey A. Verdin, Jessie J. Verdin, John P. Verdin, Joseph. Verdin, Joseph A Jr. Verdin, Joseph Cleveland. Verdin, Joseph D Jr. Verdin, Joseph S. Verdin, Joseph W Jr. Verdin, Justilien G. Verdin, Matthew W Sr. Verdin, Michel A. Verdin, Paul E. Verdin, Perry Anthony. Verdin, Rodney. Verdin, Rodney P. Verdin, Rodney P. Verdin, Skylar. Verdin, Timmy J. Verdin, Toby. Verdin, Tommy P. Verdin, Tony J. Verdin, Troy. Verdin, Vincent. Verdin, Viness Jr. Verdin, Wallace P. Verdin, Webb A Sr. Verdin, Wesley D Sr. Verdine, Jimmy R. Vermeulen, Joseph Thomas. Verret, Darren L. Verret, Donald J. Verret, Ernest J Sr. Verret, James A. Verret, Jean E. Verret, Jimmy J Sr. Verret, Johnny R. Verret, Joseph L. Verret, Paul L. Verret, Preston. Verret, Quincy. Verret, Ronald Paul Sr. Versaggi, Joseph A. Versaggi, Salvatore J. Vicknair, Brent J Sr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Vicknair, Duane P. Vicknair, Henry Dale. Vicknair, Ricky A. Vidrine, Bill and Kathi. Vidrine, Corey. Vidrine, Richard. Vila, William F. Villers, Joseph A. Vincent, Gage Tyler. Vincent, Gene. Vincent, Gene B. Vincent, Robert N. Vise, Charles E III. Vizier, Barry A. Vizier, Christopher. Vizier, Clovis J III. Vizier, Douglas M. Vizier, Tommie Jr. Vo, Anh M. Vo, Chin Van. Vo, Dam. Vo, Dan M. Vo, Dany. Vo, Day V. Vo, Duong V. Vo, Dustin. Vo, Hai Van. Vo, Hanh Xuan. Vo, Hien Van. Vo, Hoang The. Vo, Hong. Vo, Hung Thanh. Vo, Huy K. Vo, Johnny. Vo, Kent. Vo, Lien Van. Vo, Man. Vo, Mark Van. Vo, Minh Hung. Vo, Minh Ngoc. Vo, Minh Ray. Vo, Mong V. Vo, My Dung Thi. Vo, My Lynn. Vo, Nga. Vo, Nhon Tai. Vo, Nhu Thanh. Vo, Quang Minh. Vo, Sang M. Vo, Sanh M. Vo, Song V. Vo, Tan Thanh. Vo, Tan Thanh. Vo, Thanh Van. Vo, Thao. Vo, Thuan Van. Vo, Tien Van. Vo, Tom. Vo, Tong Ba. Vo, Trao Van. Vo, Truong. Vo, Van Van. Vo, Vi Viet. Vodopija, Benjamin S. Vogt, James L. Voisin, Eddie James. Voisin, Joyce. Voison, Jamie. Von Harten, Harold L. Vona, Michael A. Vongrith, Richard. Vossler, Kirk. Vu, Hung.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Vu, John H. Vu, Khanh. Vu, Khoi Van. Vu, Quan Quoc. Vu, Ruyen Viet. Vu, Sac. Vu, Sean. Vu, Tam. Vu, Thiem Ngoc. Vu, Thuy. Vu, Tom. Vu, Tu Viet. Vu, Tuyen Jack. Vu, Tuyen Viet. Wade, Calvin J Jr. Wade, Gerard. Waguespack, David M Sr. Waguespack, Randy P II. Wainwright, Vernon. Walker, Jerry. Walker, Rogers H. Wallace, Dennis. Wallace, Edward. Wallace, John A. Wallace, John K. Wallace, Trevis L. Waller, Jack Jr. Waller, John M. Waller, Mike. Wallis, Craig A. Wallis, Keith. Walters, Samuel G. Walton, Marion M. Wannage, Edward Joseph. Wannage, Fred Jr. Wannage, Frederick W Sr. Ward, Clarence Jr. Ward, Olan B. Ward, Walter M. Washington, Clifford. Washington, John Emile III. Washington, Kevin. Washington, Louis N. Wattigney, Cecil K Jr. Wattigney, Michael. Watts, Brandon A. Watts, Warren. Webb, Bobby. Webb, Bobby N. Webb, Josie M. Webre, Donald. Webre, Dudley A. Webster, Harold. Weeks, Don Franklin. Weems, Laddie E. Weinstein, Barry C. Weiskopf, Rodney. Weiskopf, Rodney Sr. Weiskopf, Todd. Welch, Amos J. Wells, Douglas E. Wells, Stephen Ray. Wendling, Steven W. Wescovich, Charles W. Wescovich, Wesley Darryl. Whatley, William J. White, Allen Sr. White, Charles. White, Charles Fulton. White, David L. White, Gary Farrell. White, James Hugh. White, Perry J.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			White, Raymond. White, Robert Sr. Wicher, John. Wiggins, Chad M Sr. Wiggins, Ernest. Wiggins, Harry L. Wiggins, Kenneth A. Wiggins, Matthew. Wilbur, Gerald Anthony. Wilcox, Robert. Wiles, Alfred Adam. Wiles, Glen Gilbert. Wiles, Sonny Joel Sr. Wilkerson, Gene Dillard and Judith. Wilkinson, William Riley. Williams, Allen Jr. Williams, Andrew. Williams, B Dean. Williams, Clyde L. Williams, Dale A. Williams, Emmett J. Williams, Herman J Jr. Williams, J T. Williams, John A. Williams, Johnny Paul. Williams, Joseph H. Williams, Kirk. Williams, Leopold A. Williams, Mark A. Williams, Mary Ann C. Williams, Melissa A. Williams, Nina. Williams, Oliver Kent. Williams, Parish. Williams, Roberto. Williams, Ronnie. Williams, Scott A. Williams, Steven. Williams, Thomas D. Williamson, Richard L Sr. Willyard, Derek C. Willyard, Donald R. Wilson, Alward. Wilson, Hosea. Wilson, Joe R. Wilson, Jonathan. Wilson, Katherine. Wiltz, Allen. Wing, Melvin. Wiseman, Allen. Wiseman, Clarence J Jr. Wiseman, Jean P. Wiseman, Joseph A. Wiseman, Michael T Jr. Wiseman, Michael T Sr. Wolfe, Charles. Woods, John T III. Wright, Curtis. Wright, Leonard. Wright, Randy D. Yeamans, Douglas. Yeamans, Neil. Yeamans, Ronnie. Yoeuth, Peon. Yopp, Harold. Yopp, Jonathon. Yopp, Milton Thomas. Young, James. Young, Taing. Young, Willie. Yow, Patricia D. Yow, Richard C. Zanca, Anthony V Sr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Zar, Ashley A. Zar, Carl J. Zar, John III. Zar, Steve. Zar, Steven. Zar, Troy A. Zerinque, John S Jr. Zirlott, Curtis. Zirlott, Jason D. Zirlott, Jeremy. Zirlott, Kimberly. Zirlott, Milton. Zirlott, Perry. Zirlott, Rosa H. Zito, Brian C. Zuvich, Michael A Jr. Ad Hoc Shrimp Trade Action Committee. Bryan Fishermens' Co-Op Inc. Louisiana Shrimp Association. South Carolina Shrimpers Association. Vietnamese-American Commerical Fisherman's Union. 3-G Enterprize dba Griffin's Seafood. A & G Trawlers Inc. A & T Shrimping. A Ford Able Seafood. A J Horizon Inc. A&M Inc. A&R Shrimp Co. A&T Shrimping. AAH Inc. AC Christopher Sea Food Inc. Ace of Trade LLC. Adriana Corp. AJ Boats Inc. AJ Horizon Inc. AJ's Seafood. Alario Inc. Alcide J Adams Jr. Aldebaran Inc. Aldebran Inc. Alexander and Dola. Alfred Englade Inc. Alfred Trawlers Inc. Allen Hai Tran dba Kien Giang. Al's Shrimp Co. Al's Shrimp Co LLC. Al's Shrimp Co LLC. Al's Whosale & Retail. Alton Cheeks. Amada Inc. Amber Waves. Amelia Isle. American Beauty. American Beauty Inc. American Eagle Enterprise Inc. American Girl. American Seafood. Americana Shrimp. Amvina II. Amvina II. Amy D Inc. Amy's Seafood Mart. An Kit. Andy Boy. Andy's SFD. Angel Annie Inc. Angel Leigh. Angel Seafood Inc. Angela Marie Inc. Angela Marie Inc. Angelina Inc. Anna Grace LLC. Anna Grace LLC.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Annie Thornton Inc. Annie Thornton Inc. Anthony Boy I. Anthony Boy I. Anthony Fillinich Sr. Apalachee Girl Inc. Aparicio Trawlers Inc dba Marcosa. Apple Jack Inc. Aquila Seafood Inc. Aquillard Seafood. Argo Marine. Arnold's Seafood. Arroya Cruz Inc. Art & Red Inc. Arthur Chisholm. A-Seafood Express. Ashley Deeb Inc. Ashley W 648675. Asian Gulf Corp. Atlantic. Atocha Troy A LeCompte Sr. Atwood Enterprises. B & B Boats Inc. B & B Seafood. B&J Seafood. BaBe Inc. Baby Ruth. Bailey, David B Sr—Bailey's Seafood. Bailey's Seafood of Cameron Inc. Bait Inc. Bait Inc. Baker Shrimp. Bama Love Inc. Bama Sea Products Inc. Bao Hung Inc. Bao Hung Inc. Bar Shrimp. Barbara Brooks Inc. Barbara Brooks Inc. Barisich Inc. Barisich Inc. Barnacle-Bill Inc. Barney's Bait & Seafood. Barrios Seafood. Bay Boy. Bay Islander Inc. Bay Sweeper Nets. Baye's Seafood 335654. Bayou Bounty Seafood LLC. Bayou Caddy Fisheries Inc. Bayou Carlin Fisheries. Bayou Carlin Fisheries Inc. Bayou Shrimp Processors Inc. BBC Trawlers Inc. BBS Inc. Beachcomber Inc. Beachcomber Inc. Bea's Corp. Beecher's Seafood. Believer Inc. Bennett's Seafood. Benny Alexie. Bergeron's Seafood. Bertileana Corp. Best Sea-Pack of Texas Inc. Beth Lomonte Inc. Beth Lomonte Inc. Betty B. Betty H Inc. Bety Inc. BF Millis & Sons Seafood. Big Daddy Seafood Inc. Big Grapes Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Big Kev. Big Oak Seafood. Big Oak Seafood. Big Oaks Seafood. Big Shrimp Inc. Billy J Foret—BJF Inc. Billy Sue Inc. Billy Sue Inc. Biloxi Freezing & Processing. Binh Duong. BJB LLC. Blain & Melissa Inc. Blanca Cruz Inc. Blanchard & Cheramie Inc. Blanchard Seafood. Blazing Sun Inc. Blazing Sun Inc. Blue Water Seafood. Bluewater Shrimp Co. Bluffton Oyster Co. Boat Josey Wales. Boat Josey Wales LLC. Boat Monica Kiff. Boat Warrior. Bob-Rey Fisheries Inc. Bodden Trawlers Inc. Bolillo Prieto Inc. Bon Secour Boats Inc. Bon Secour Fisheries Inc. Bon Secur Boats Inc. Bonnie Lass Inc. Boone Seafood. Bosarge Boats. Bosarge Boats. Bosarge Boats Inc. Bottom Verification LLC. Bowers Shrimp. Bowers Shrimp Farm. Bowers Valley Shrimp Inc. Brad Friloux. Brad Nicole Seafood. Bradley John Inc. Bradley's Seafood Mkt. Brava Cruz Inc. Brenda Darlene Inc. Brett Anthony. Bridgeside Marina. Bridgeside Seafood. Bridget's Seafood Service Inc. Bridget's Seafood Service Inc. BRS Seafood. BRS Seafood. Bruce W Johnson Inc. Bubba Daniels Inc. Bubba Tower Shrimp Co. Buccaneer Shrimp Co. Buchmer Inc. Buck & Peed Inc. Buddy Boy Inc. Buddy's Seafood. Bumble Bee Seafoods LLC. Bumble Bee Seafoods LLC. Bundy Seafood. Bundy's Seafood. Bunny's Shrimp. Burgbe Gump Seafood. Burnell Trawlers Inc. Burnell Trawlers Inc/Mamacita/Swamp Irish. Buster Brown Inc. By You Seafood. C & R Trawlers Inc. CA Magwood Enterprises Inc. Cajun Queen of LA LLC.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Calcasien Point Bait N More Inc. Cam Ranh Bay. Camardelle's Seafood. Candy Inc. Cao Family Inc. Cap Robear. Cap'n Bozo Inc. Capn Jasper's Seafood Inc. Capt Aaron. Capt Adam. Capt Anthony Inc. Capt Bean (Richard A Ragas). Capt Beb Inc. Capt Bill Jr Inc. Capt Brother Inc. Capt Bubba. Capt Buck. Capt Carl. Capt Carlos Trawlers Inc. Capt Chance Inc. Capt Christopher Inc. Capt Chuckie. Capt Craig. Capt Craig Inc. Capt Crockett Inc. Capt Darren Hill Inc. Capt Dennis Inc. Capt Dickie Inc. Capt Dickie V Inc. Capt Doug. Capt Eddie Inc. Capt Edward Inc. Capt Eli's. Capt Elroy Inc. Capt Ernest LLC. Capt Ernest LLC. Capt GDA Inc. Capt George. Capt H & P Corp. Capt Havey Seafood. Capt Henry Seafood Dock. Capt Huy. Capt JDL Inc. Capt Jimmy Inc. Capt Joe. Capt Johnny II. Capt Jonathan. Capt Jonathan Inc. Capt Joshua Inc. Capt Jude 520556 13026. Capt Ken. Capt Kevin Inc. Capt Ko Inc. Capt Kounng Lim. Capt Larry Seafood Market. Capt Larry's Inc. Capt LC Corp. Capt LD Seafood Inc. Capt Linton Inc. Capt Mack Inc. Capt Marcus Inc. Capt Morris. Capt Opie. Capt P Inc. Capt Pappie Inc. Capt Pat. Capt Paw Paw. Capt Pete Inc. Capt Peter Long Inc. Capt Pool Bear II's Seafood. Capt Quang. Capt Quina Inc. Capt Richard.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Capt Ross Inc. Capt Roy. Capt Russell Jr Inc. Capt Ryan Inc. Capt Ryan's. Capt Sam. Capt Sang. Capt Scar Inc. Capt Scott. Capt Scott 5. Capt Scott Seafood. Capt Sparkers Shrimp. Capt St Peter. Capt T&T Corp. Capt Thien. Capt Tommy Inc. Capt Two Inc. Capt Van's Seafood. Capt Walley Inc. Capt Zoe Inc. Captain Allen's Bait & Tackle. Captain Arnulfo Inc. Captain Blair Seafood. Captain Dexter Inc. Captain D's. Captain Homer Inc. Captain Jeff. Captain JH III Inc. Captain Joshua. Captain Larry'O. Captain Miss Cammy Nhung. Captain Regis. Captain Rick. Captain T/Thiet Nguyen. Captain Tony. Captain Truong Phi Corp. Captain Vinh. Cap't-Brandon. Captian Thomas Trawler Inc. Carlino Seafood. Carly Sue Inc. Carmelita Inc. Carolina Lady Inc. Carolina Sea Foods Inc. Caroline and Calandra Inc. Carson & Co. Carson & Co Inc. Cary Encalade Trawling. Castellano's Corp. Cathy Cheramie Inc. CBS Seafood & Catering LLC. CBS Seafood & Catering LLC. Cecilia Enterprise Inc. CF Gollot & Son Sfd Inc. CF Gollott and Son Seafood Inc. Chackbay Lady. Chad & Chaz LLC. Challenger Shrimp Co Inc. Chalmette Marine Supply Co Inc. Chalmette Net & Trawl. Chapa Shrimp Trawlers. Chaplin Seafood. Charlee Girl. Charles Guidry Inc. Charles Sellers. Charles White. Charlotte Maier Inc. Charlotte Maier Inc. Chef Seafood Ent LLC. Cheramies Landing. Cherry Pt Seafood. Cheryl Lynn Inc. Chez Francois Seafood.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Chilling Pride Inc. Chin Nguyen Co. Chin Nguyen Co. Chinatown Seafood Co Inc. Chines Cajun Net Shop. Chris Hansen Seafood. Christian G Inc. Christina Leigh Shrimp Co. Christina Leigh Shrimp Company Inc. Christina Leigh Shrimp Company Inc. Cieutat Trawlers. Cinco de Mayo Inc. Cindy Lynn Inc. Cindy Mae Inc. City Market Inc. CJ Seafood. CJs Seafood. Clifford Washington. Clinton Hayes—C&S Enterprises of Brandon Inc. Cochran's Boat Yard. Colorado River Seafood. Colson Marine. Comm Fishing. Commercial Fishing Service CFS Seafoods. Cong Son. Cong-An Inc. Country Girl Inc. Country Inc. Courtney & Ory Inc. Cowdrey Fish. Cptn David. Crab-Man Bait Shop. Craig A Wallis, Keith Wallis dba W&W Dock & 10 boats. Cristina Seafood. CRJ Inc. Cruillas Inc. Crusader Inc. Crustacean Frustration. Crystal Gayle Inc. Crystal Light Inc. Crystal Light Inc. Curtis Henderson. Custom Pack Inc. Custom Pack Inc. Cyril's Ice House & Supplies. D & A Seafood. D & C Seafood Inc. D & J Shrimping LLC. D & M Seafood & Rental LLC. D Ditcharo Jr Seafoods. D G & R C Inc. D S L & R Inc. D&T Marine Inc. Daddys Boys. DaHa Inc/Cat'Sass. DAHAPA Inc. Dale's Seafood Inc. Dang Nguyen. Daniel E Lane. Danny Boy Inc. Danny Max. David & Danny Inc. David C Donnelly. David Daniels. David Ellison Jr. David Gollott Sfd Inc. David W Casanova's Seafood. David White. David's Shrimping Co. Davis Seafood. Davis Seafood. Davis Seafood Inc. Dawn Marie.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Deana Cheramie Inc. Deanna Lea. Dean's Seafood. Deau Nook. Debbe Anne Inc. Deep Sea Foods Inc/Jubilee Foods Inc. Delcambre Seafood. Dell Marine Inc. Dennis Menesses Seafood. Dennis' Seafood Inc. Dennis Shrimp Co Inc. Desperado. DFS Inc. Diamond Reef Seafood. Diem Inc. Dinh Nguyen. Dixie General Store LLC. Dixie Twister. Dominick's Seafood Inc. Don Paco Inc. Donald F Boone II. Dong Nguyen. Donini Seafoods Inc. Donna Marie. Donovan Tien I & II. Dopson Seafood. Dorada Cruz Inc. Double Do Inc. Double Do Inc. Doug and Neil Inc. Douglas Landing. Doxey's Oyster & Shrimp. Dragnet II. Dragnet Inc. Dragnet Seafood LLC. Dubberly's Mobile Seafood. Dudenhefer Seafood. Dugas Shrimp Co LLC. Dunamis Towing Inc. Dupree's Seafood. Duval & Duval Inc. Dwayne's Dream Inc. E & M Seafood. E & T Boating. E Gardner McClellan. E&E Shrimp Co Inc. East Coast Seafood. East Coast Seafood. East Coast Seafood. East Coast Seafood. Edisto Queen LLC. Edward Garcia Trawlers. EKV Inc. El Pedro Fishing & Trading Co Inc. Eliminator Inc. Elizabeth Nguyen. Ellerbee Seafoods. Ellie May. Elmira Pflueckhahn Inc. Elmira Pflueckhahn Inc. Elvira G Inc. Emily's SFD. Emmanuel Inc. Ensenada Cruz Inc. Enterprise. Enterprise Inc. Equalizer Shrimp Co Inc. Eric F Dufrene Jr LLC. Erica Lynn Inc. Erickson & Jensen Seafood Packers. Ethan G Inc. Excalibur LLC. F/V Apalachee Warrior.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			F/V Atlantis I. F/V Capt Walter B. F/V Captain Andy. F/V Eight Flags. F/V Mary Ann. F/V Miss Betty. F/V Morning Star. F/V Nam Linh. F/V Olivia B. F/V Phuoc Thanh Mai II. F/V Sea Dolphin. F/V Southern Grace. F/V Steven Mai. F/V Steven Mai II. Famer Boys Catfish Kitchens. Family Thing. Father Casimir Inc. Father Dan Inc. Father Mike Inc. Fiesta Cruz Inc. Fine Shrimp Co. Fire Fox Inc. Fisherman's Reef Shrimp Co. Fishermen IX Inc. Fishing Vessel Enterprise Inc. Five Princesses Inc. FKM Inc. Fleet Products Inc. Flower Shrimp House. Flowers Seafood Co. Floyd's Wholesale Seafood Inc. Fly By Night Inc. Forest Billiot Jr. Fortune Shrimp Co Inc. FP Oubre. Francis Brothers Inc. Francis Brothers Inc. Francis III. Frank Toomer Jr. Fran-Tastic Too. Frederick-Dan. Freedom Fishing Inc. Freeman Seafood. Frelich Seafood Inc. Frenchie D-282226. Frupp Point Seafood. G & L Trawling Inc. G & O Shrimp Co Inc. G & O Trawlers Inc. G & S Trawlers Inc. G D Ventures II Inc. G G Seafood. G R LeBlanc Trawlers Inc. Gail's Bait Shop. Gale Force Inc. Gambler Inc. Gambler Inc. Garijak Inc. Gary F White. Gator's Seafood. Gay Fish Co. Gay Fish Co. GeeChee Fresh Seafood. Gemita Inc. Gene P Callahan Inc. George J Price Sr Ent Inc. Georgia Shrimp Co LLC. Gerica Marine. Gilden Enterprises. Gillikin Marine Railways Inc. Gina K Inc. Gisco Inc. Gisco Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Glenda Guidry Inc. Gloria Cruz Inc. Go Fish Inc. God's Gift. God's Gift Shrimp Vessel. Gogie. Gold Coast Seafood Inc. Golden Gulf Coast Pkg Co Inc. Golden Phase Inc. Golden Text Inc. Golden Text Inc. Golden Text Inc. Goldenstar. Gollott Brothers Sfd Co Inc. Gollott's Oil Dock & Ice House Inc. Gonzalez Trawlers Inc. Gore Enterprises Inc. Gore Enterprises Inc. Gore Seafood Co. Gore Seafood Inc. Gove Lopez. Graham Fisheries Inc. Graham Shrimp Co Inc. Graham Shrimp Co Inc. Gramps Shrimp Co. Grandma Inc. Grandpa's Dream. Grandpa's Dream. Granny's Garden and Seafood. Green Flash LLC. Greg Inc. Gregory Mark Gaubert. Gregory Mark Gaubert. Gregory T Boone. Gros Tete Trucking Inc. Guidry's Bait Shop. Guidry's Net Shop. Gulf Central Seaood Inc. Gulf Crown Seafood Co Inc. Gulf Fish Inc. Gulf Fisheries Inc. Gulf Island Shrimp & Seafood II LLC. Gulf King Services Inc. Gulf Pride Enterprises Inc. Gulf Seaway Seafood Inc. Gulf Shrimp. Gulf South Inc. Gulf Stream Marina LLC. Gulf Sweeper Inc (Trawler Gulf Sweeper). Gypsy Girl Inc. H & L Seafood. Hack Berry Seafood. Hagen & Miley Inc. Hailey Marie Inc. Hanh Lai Inc. Hannah Joyce Inc. Hardy Trawlers. Hardy Trawlers. Harrington Fish Co Inc. Harrington Seafood & Supply Inc. Harrington Shrimp Co Inc. Harrington Trawlers Inc. Harris Fisheries Inc. Hazel's Hustler. HCP LLC. Heather Lynn Inc. Heavy Metal Inc. Hebert Investments Inc. Hebert's Mini Mart LLC. Helen E Inc. Helen Kay Inc. Helen Kay Inc. Helen W Smith Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Henderson Seafood. Henry Daniels Inc. Hermosa Cruz Inc. Hi Seas of Dulac Inc. Hien Le Van Inc. High Hope Inc. Hoang Anh. Hoang Long I, II. Holland Enterprises. Holly Beach Seafood. Holly Marie's Seafood Market. Hombre Inc. Home Loving Care Co. Hondumex Ent Inc. Hong Nga Inc. Hongri Inc. Houston Foret Seafood. Howerin Trawlers Inc. HTH Marine Inc. Hubbard Seafood. Hurricane Emily Seafood Inc. Hutcherson Christian Shrimp Inc. Huyen Inc. Icy Seafood II Inc. ICY Seafood Inc. Icy Seafood Inc. Ida's Seafood Rest & Market. Ike & Zack Inc. Independent Fish Company Inc. Inflation Inc. Integrity Fisheries Inc. Integrity Fishing Inc. International Oceanic Ent. Interstate Vo LLC. Intracoastal Seafood Inc. Iorn Will Inc. Irma Trawlers Inc. Iron Horse Inc. Isabel Maier Inc. Isabel Maier Inc. Isla Cruz Inc. J & J Rentals Inc. J & J Trawler's Inc. J & R Seafood. J Collins Trawlers. J D Land Co. Jackie & Hiep Trieu. Jacob A Inc. Jacquelin Marie Inc. Jacquelin Marie Inc. James D Quach Inc. James E Scott III. James F Dubberly. James Gadson. James J Matherne Jr. James J Matherne Sr. James Kenneth Lewis Sr. James LaRive Jr. James W Green Jr dba Miss Emilie Ann. James W Hicks. Janet Louise Inc. Jani Marie. JAS Inc. JBS Packing Co Inc. JBS Packing Inc. JCM. Jean's Bait. Jeff Chancey. Jemison Trawler's Inc. Jenna Dawn LLC. Jennifer Nguyen—Capt T. Jensen Seafood Pkg Co Inc. Jesse LeCompte Jr.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Jesse LeCompte Sr. Jesse Shantelle Inc. Jessica Ann Inc. Jessica Inc. Jesus G Inc. Jimmy and Valerie Bonvillain. Jimmy Le Inc. Jim's Cajen Shrimp. Joan of Arc Inc. JoAnn and Michael W Daigle. Jody Martin. Joe Quach. Joel's Wild Oak Bait Shop & Fresh Seafood. John A Norris. John J Alexie. John Michael E Inc. John V Alexie. Johnny & Joyce's Seafood. Johnny O Co. Johnny's Seafood. John's Seafood. Joker's Wild. Jones-Kain Inc. Joni John Inc (Leon J Champagne). Jon's C Seafood Inc. Joseph Anthony. Joseph Anthony Inc. Joseph Garcia. Joseph Martino. Joseph Martino Corp. Joseph T Vermeulen. Josh & Jake Inc. Joya Cruz Inc. JP Fisheries. Julie Ann LLC. Julie Hoang. Julie Shrimp Co Inc (Trawler Julie). Julio Gonzalez Boat Builders Inc. Justin Dang. JW Enterprise. K & J Trawlers. K&D Boat Company. K&S Enterprises Inc. Kalliainen Seafoods Inc. KAM Fishing. Kandi Sue Inc. Karl M Belsome LLC. KBL Corp. KDH Inc. Keith M Swindell. Kellum's Seafood. Kellum's Seafood. Kelly Marie Inc. Ken Lee's Dock LLC. Kenneth Guidry. Kenny-Nancy Inc. Kentucky Fisheries Inc. Kentucky Trawlers Inc. Kevin & Bryan (M/V). Kevin Dang. Khang Dang. Khanh Huu Vu. Kheng Sok Shrimping. Kim & James Inc. Kim Hai II Inc. Kim Hai Inc. Kim's Seafood. Kingdom World Inc. Kirby Seafood. Klein Express. KMB Inc. Knight's Seafood Inc. Knight's Seafood Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Knowles Noel Camardelle. Kramer's Bait Co. Kris & Cody Inc. KTC Fishery LLC. L & M. L & N Friendship Corp. L & O Trawlers Inc. L & T Inc. L&M. LA—3184 CA. La Belle Idee. La Macarela Inc. La Pachita Inc. LA—6327—CA. LaBauve Inc. LaBauve Inc. Lade Melissa Inc. Lady Agnes II. Lady Agnes III. Lady Amelia Inc. Lady Anna I. Lady Anna II. Lady Barbara Inc. Lady Carolyn Inc. Lady Catherine. Lady Chancery Inc. Lady Chelsea Inc. Lady Danielle. Lady Debra Inc. Lady Dolcina Inc. Lady Gail Inc. Lady Katherine Inc. Lady Kelly Inc. Lady Kelly Inc. Lady Kristie. Lady Lavang LLC. Lady Liberty Seafood Co. Lady Lynn Ltd. Lady Marie Inc. Lady Melissa Inc. Lady Shelly. Lady Shelly. Lady Snow Inc. Lady Stephanie. Lady Susie Inc. Lady Kim T Inc. Lady TheLna. Lady Toni Inc. Lady Veronica. Lafitte Frozen Foods Corp. Lafont Inc. Lafourche Clipper Inc. Lafourche Clipper Inc. Lamarah Sue Inc. Lan Chi Inc. Lan Chi Inc. Lancero Inc. Lanny Renard and Daniel Bourque. Lapeyrouse Seafood Bar Groc Inc. Larry G Kellum Sr. Larry Scott Freeman. Larry W Hicks. Lasseigne & Sons Inc. Laura Lee. Lauren O. Lawrence Jacobs Sfd. Lazaretta Packing Inc. Le & Le Inc. Le Family Inc. Le Family Inc. Le Tra Inc. Leek & Millington Trawler Privateer. Lee's Sales & Distribution.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Leonard Shrimp Producers Inc. Leoncea B Regnier. Lerin Lane. Li Johnson. Liar Liar. Libertad Fisheries Inc. Liberty I. Lighthouse Fisheries Inc. Lil Aly. Lil Arthur Inc. Lil BJ LLC. Lil Robbie Inc. Lil Robbie Inc. Lil Robin. Lil Robin. Lilla. Lincoln. Linda & Tot Inc. Linda Cruz Inc. Linda Hoang Shrimp. Linda Lou Boat Corp. Linda Lou Boat Corp. Lisa Lynn Inc. Lisa Lynn Inc. Little Andrew Inc. Little Andy Inc. Little Arthur. Little David Gulf Trawler Inc. Little Ernie Gulf Trawler Inc. Little Ken Inc. Little Mark. Little William Inc. Little World. LJL Inc. Long Viet Nguyen. Longwater Seafood dba Ryan H Longwater. Louisiana Gulf Shrimp LLC. Louisiana Lady Inc. Louisiana Man. Louisiana Newpack Shrimp Co Inc. Louisiana Pride Seafood Inc. Louisiana Pride Seafood Inc. Louisiana Seafood Dist LLC. Louisiana Shrimp & Packing Inc. Louisiana Shrimp and Packing Co Inc. Lovely Daddy II & III. Lovely Jennie. Low Country Lady (Randolph N Rhodes). Low County Lady. Luchador Inc. Lucky. Lucky I. Lucky Jack Inc. Lucky Lady. Lucky Lady II. Lucky Leven Inc. Lucky MV. Lucky Ocean. Lucky Sea Star Inc. Lucky Star. Lucky World. Lucky's Seafood Market & Poboys LLC. Luco Drew's. Luisa Inc. Lupe Martinez Inc. LV Marine Inc. LW Graham Inc. Lyle LeCompte. Lynda Riley Inc. Lynda Riley Inc. M & M Seafood. M V Sherry D. M V Tony Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			M&C Fisheries. M/V Baby Doll. M/V Chevo's Bitch. M/V Lil Vicki. M/V Loco-N Motion. M/V Patsy K #556871. M/V X L. Mabry Allen Miller Jr. Mad Max Seafood. Madera Cruz Inc. Madison Seafood. Madlin Shrimp Co Inc. Malibu. Malolo LLC. Mamacita Inc. Man Van Nguyen. Manteo Shrimp Co. Marco Corp. Marcos A. Maria Elena Inc. Maria Sandi. Mariachi Trawlers Inc. Mariah Jade Shrimp Company. Marie Teresa Inc. Marine Fisheries. Marisa Elida Inc. Mark and Jace. Marleann. Martin's Fresh Shrimp. Mary Bea Inc. Master Brandon Inc. Master Brock. Master Brock. Master Dylan. Master Gerald Trawlers Inc. Master Hai. Master Hai II. Master Henry. Master Jared Inc. Master Jhy Inc. Master John Inc. Master Justin Inc. Master Justin Inc. Master Ken Inc. Master Kevin Inc. Master Martin Inc. Master Mike Inc. Master NT Inc. Master Pee-Wee. Master Ronald Inc. Master Scott. Master Scott II. Master Seelos Inc. Master T. Master Tai LLC. Master Tai LLC. Mat Roland Seafood Co. Maw Doo. Mayflower. McQuaig Shrimp Co Inc. Me Kong. Melerine Seafood. Melody Shrimp Co. Mer Shrimp Inc. Michael Lynn. Michael Nguyen. Michael Saturday's Fresh Every Day South Carolina Shrimp. Mickey Nelson Net Shop. Mickey's Net. Midnight Prowler. Mike's Seafood Inc. Miley's Seafood Inc. Militello and Son Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Miller & Son Seafood Inc. Miller Fishing. Milliken & Son's. Milton J Dufrene and Son Inc. Milton Yopp—Capt'n Nathan & Thomas Winfield. Minh & Liem Doan. Mis Quynh Chi II. Miss Adrianna Inc. Miss Alice Inc. Miss Ann Inc. Miss Ann Inc. Miss Ashleigh. Miss Ashleigh Inc. Miss Barbara. Miss Barbara Inc. Miss Bernadette A Inc. Miss Bertha (M/V). Miss Beverly Kay. Miss Brenda. Miss Candace. Miss Candace Nicole Inc. Miss Carla Jean Inc. Miss Caroline Inc. Miss Carolyn Louise Inc. Miss Caylee. Miss Charlotte Inc. Miss Christine III. Miss Cleda Jo Inc. Miss Courtney Inc. Miss Courtney Inc. Miss Cynthia. Miss Danielle Gulf Trawler Inc. Miss Danielle LLC. Miss Dawn. Miss Ellie Inc. Miss Faye LLC. Miss Fina Inc. Miss Georgia Inc. Miss Hannah. Miss Hannah Inc. Miss Hazel Inc. Miss Hilary Inc. Miss Jennifer Inc. Miss Joanna Inc. Miss Julia. Miss Kandy Tran LLC. Miss Kandy Tran LLC. Miss Karen. Miss Kathi Inc. Miss Kathy. Miss Kaylyn LLC. Miss Khayla. Miss Lil. Miss Lillie Inc. Miss Liz Inc. Miss Loraine. Miss Loraine Inc. Miss Lori Dawn IV Inc. Miss Lori Dawn V Inc. Miss Lori Dawn VI Inc. Miss Lori Dawn VII Inc. Miss Lorie Inc. Miss Luana D Shrimp Co. Miss Luana D Shrimp Co. Miss Madeline Inc. Miss Madison. Miss Marie. Miss Marie Inc. Miss Marilyn Louis Inc. Miss Marilyn Louise. Miss Marilyn Louise Inc. Miss Marissa Inc. Miss Martha Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Miss Martha Inc. Miss Mary T. Miss Myle. Miss Narla. Miss Nicole. Miss Nicole Inc. Miss Plum Inc. Miss Quynh Anh I. Miss Quynh Anh I LLC. Miss Quynh Anh II LLC. Miss Redemption LLC. Miss Rhianna Inc. Miss Sambath. Miss Sandra II. Miss Sara Ann. Miss Savannah. Miss Savannah II. Miss Soriya. Miss Suzanne. Miss Sylvia. Miss Than. Miss Thom. Miss Thom Inc. Miss Tina Inc. Miss Trinh Trinh. Miss Trisha Inc. Miss Trisha Inc. Miss Verna Inc. Miss Vicki. Miss Victoria Inc. Miss Vivian Inc. Miss WillaDean. Miss Winnie Inc. Miss Yvette Inc. Miss Yvonne. Misty Morn Eat. Misty Star. MJM Seafood Inc. M'M Shrimp Co Inc. Mom & Dad Inc. Mona-Dianne Seafood. Montha Sok and Tan No Le. Moon River Inc. Moon Tillett Fish Co Inc. Moonlight. Moonlight Mfg. Moore Trawlers Inc. Morgan Creek Seafood. Morgan Rae Inc. Morning Star. Morrison Seafood. Mother Cabrini. Mother Teresa Inc. Mr & Mrs Inc. Mr & Mrs Inc. Mr Coolly. Mr Fox. Mr Fox. Mr G. Mr Gaget LLC. Mr Henry. Mr Natural Inc. Mr Neil. Mr Phil T Inc. Mr Sea Inc. Mr Verdin Inc. Mr Williams. Mrs Judy Too. Mrs Tina Lan Inc. Ms Alva Inc. Ms An. My Angel II. My Blues.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			My Dad Whitney Inc. My Girls LLC. My Thi Tran Inc. My Three Sons Inc. My V Le Inc. My-Le Thi Nguyen. Myron A Smith Inc. Nancy Joy. Nancy Joy Inc. Nancy Joy Inc. Nanny Granny Inc. Nanny Kat Seafood LLC. Napolean Seafoods. Napoleon II. Napoleon Seafood. Napoleon SF. Naquin's Seafood. Nautilus LLC. Nelma Y Lane. Nelson and Son. Nelson Trawlers Inc. Nelson's Quality Shrimp Company. Nevgulmarco Co Inc. New Deal Comm Fishing. New Way Inc. Nguyen Day Van. Nguyen Express. Nguyen Int'l Enterprises Inc. Nguyen Shipping Inc. NHU UYEN. Night Moves of Cut Off Inc. Night Shift LLC. Night Star. North Point Trawlers Inc. North Point Trawlers Inc. Nuestra Cruz Inc. Nunez Seafood. Oasis. Ocean Bird Inc. Ocean Breeze Inc. Ocean Breeze Inc. Ocean City Corp. Ocean Emperor Inc. Ocean Harvest Wholesale Inc. Ocean Pride Seafood Inc. Ocean Seafood. Ocean Select Seafood LLC. Ocean Springs Seafood Market Inc. Ocean Wind Inc. Oceanica Cruz Inc. Odin LLC. Old Maw Inc. Ole Holbrook's Fresh Fish Market LLC. Ole Nelle. One Stop Bait & Ice. Open Sea Inc. Orage Enterprises Inc. Orn Roeum Shrimping. Otis Cantrelle Jr. Otis M Lee Jr. Owens Shrimping. Palmetto Seafood Inc. Papa Rod Inc. Papa T. Pappy Inc. Pappy's Gold. Parfait Enterprises Inc. Paris/Asia. Parramore Inc. Parrish Shrimping Inc. Pascagoula Ice & Freezer Co Inc. Pat-Lin Enterprises Inc. Patricia Foret.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Patrick Sutton Inc. Patty Trish Inc. Paul Piazza and Son Inc. Paw Paw Allen. Paw Paw Pride Inc. Pearl Inc dba Indian Ridge Shrimp Co. Pei Gratia Inc. Pelican Point Seafood Inc. Penny V LLC. Perlita Inc. Perseverance I LLC. Pete & Queenie Inc. Phat Le and Le Tran. Phi Long Inc. Phi-Ho LLC. Pip's Place Marina Inc. Plaisance Trawlers Inc. Plata Cruz Inc. Poc-Tal Trawlers Inc. Pointe-Aux-Chene Marina. Pontchaubrain Blue Crab. Pony Express. Poppee. Poppy's Pride Seafood. Port Bolivar Fisheries Inc. Port Marine Supplies. Port Royal Seafood Inc. Poteet Seafood Co Inc. Potter Boats Inc. Price Seafood Inc. Prince of Tides. Princess Ashley Inc. Princess Celine Inc. Princess Cindy Inc. Princess Lorie LLC. Princess Mary Inc. Prosperity. PT Fisheries Inc. Punch's Seafood Mkt. Purata Trawlers Inc. Pursuer Inc. Quality Seafood. Quang Minh II Inc. Queen Lily Inc. Queen Mary. Queen Mary Inc. Quinta Cruz Inc. Quoc Bao Inc. Quynh NHU Inc. Quynh Nhu Inc. R & J Inc. R & K Fisheries LLC. R & L Shrimp Inc. R & P Fisheries. R & R Bait/Seafood. R & S Shrimping. R & T Atocha LLC. R&D Seafood. R&K Fisheries LLC. R&R Seafood. RA Lesso Brokerage Co Inc. RA Lesso Seafood Co Inc. Rachel-Jade. Ralph Lee Thomas Jr. Ralph W Jones. Ramblin Man Inc. Ranchero Trawlers Inc. Randall J Pinell Inc. Randall J Pinell Inc. Randall K and Melissa B Richard. Randall Pinell. Randy Boy Inc. Randy Boy Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Rang Dong. Raul L. Castellanos. Raul's Seafood. Raul's Seafood. Rayda Cheramie Inc. Raymond LeBouef. RCP Seafood I II III. RDR Shrimp Inc. Reagan's Seafood. Rebecca Shrimp Co Inc. Rebel Seafood. Regulus. Rejimi Inc. Reno's Sea Food. Res Vessel. Reyes Trawlers Inc. Rick's Seafood Inc. Ricky B LLC. Ricky G Inc. Riffle Seafood. Rigolets Bait & Seafood LLC. Riverside Bait & Tackle. RJ's. Roatex Ent Inc. Robanie C Inc. Robanie C Inc. Robanie C Inc. Robert E Landry. Robert H Schrimpf. Robert Johnson. Robert Keenan Seafood. Robert Upton or Terry Upton. Robert White Seafood. Rockin Robbin Fishing Boat Inc. Rodney Hereford Jr. Rodney Hereford Sr. Rodney Hereford Sr. Roger Blanchard Inc. Rolling On Inc. Romo Inc. Ronald Louis Anderson Jr. Rosa Marie Inc. Rose Island Seafood. RPM Enterprises LLC. Rubi Cruz Inc. Ruf-N-Redy Inc. Ruttley Boys Inc. Sadie D Seafood. Safe Harbour Seafood Inc. Salina Cruz Inc. Sally Kim III. Sally Kim IV. Sam Snodgrass & Co. Samaira Inc. San Dia. Sand Dollar Inc. Sandy N. Sandy O Inc. Santa Fe Cruz Inc. Santa Maria I Inc. Santa Maria II. Santa Monica Inc. Scavanger. Scooby Inc. Scooby Inc. Scottie and Juliette Dufrene. Scottie and Juliette Dufrene. Sea Angel. Sea Angel Inc. Sea Bastion Inc. Sea Drifter Inc. Sea Durbin Inc. Sea Eagle.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Sea Eagle Fisheries Inc. Sea Frontier Inc. Sea Gold Inc. Sea Gulf Fisheries Inc. Sea Gypsy Inc. Sea Hawk I Inc. Sea Horse Fisheries. Sea Horse Fisheries Inc. Sea King Inc. Sea Pearl Seafood Company Inc. Sea Queen IV. Sea Trawlers Inc. Sea World. Seabrook Seafood Inc. Seabrook Seafood Inc. Seafood & Us Inc. Seaman's Magic Inc. Seaman's Magic Inc. Seaside Seafood Inc. Seaweed 2000. Seawolf Seafood. Second Generation Seafood. Shark Co Seafood Inter Inc. Sharon—Ali Michelle Inc. Shelby & Barbara Seafood. Shelby & Barbara Seafood. Shelia Marie LLC. Shell Creek Seafood Inc. Shirley Elaine. Shirley Girl LLC. Shrimp Boat Patrice. Shrimp Boating Inc. Shrimp Express. Shrimp Man. Shrimp Networks Inc. Shrimp Trawler. Shrimper. Shrimper. Shrimpy's. Si Ky Lan Inc. Si Ky Lan Inc. Si Ky Lan Inc. Sidney Fisheries Inc. Silver Fox. Silver Fox LLC. Simon. Sims Shrimping. Skip Toomer Inc. Skip Toomer Inc. Skyla Marie Inc. Smith & Sons Seafood Inc. Snowdrift. Snowdrift. Sochenda. Soeung Phat. Son T Le Inc. Son's Pride Inc. Sophie Marie Inc. Soul Mama Inc. Souther Obsession Inc. Southern Lady. Southern Nightmare Inc. Southern Star. Southshore Seafood. Spencers Seafood. Sprig Co Inc. St Anthony Inc. St Daniel Phillip Inc. St Dominic. St Joseph. St Joseph. St Joseph II Inc. St Joseph III Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			St Joseph IV Inc. St Martin. St Martyrs VN. St Mary Seafood. St Mary Seven. St Mary Tai. St Michael Fuel & Ice Inc. St Michael's Ice & Fuel. St Peter. St Peter 550775. St Teresa Inc. St Vincent Andrew Inc. St Vincent Gulf Shrimp Inc. St Vincent One B. St Vincent One B Inc. St Vincent SF. St Vincent Sfd Inc. Start Young Inc. Steamboat Bills Seafood. Stella Mestre Inc. Stephen Dantin Jr. Stephney's Seafood. Stipelcovich Marine Wks. Stone-Co Farms LP. Stone-Co Farms LP. Stormy Sean Inc. Stormy Seas Inc. Sun Star Inc. Sun Swift Inc. Sunshine. Super Coon Inc. Super Cooper Inc. Swamp Irish Inc. Sylvan P Racine Jr—Capt Romain. T & T Seafood. T Brothers. T Cvitanovich Seafood LLC. Ta Do. Ta T Vo Inc. Ta T Vo Inc. Tana Inc. Tanya Lea Inc. Tanya Lea Inc. Tanya Lea Inc. Tasha Lou. T-Brown Inc. Tee Frank Inc. Tee Tigre Inc. Tercera Cruz Inc. Terrebonne Seafood Inc. Terri Monica. Terry Luke Corp. Terry Luke Corp. Terry Luke Corp. Terry Lynn Inc. Te-Sam Inc. Texas 1 Inc. Texas 18 Inc. Texas Lady Inc. Texas Pack Inc. Tex-Mex Cold Storage Inc. Tex-Mex Cold Storage Inc. Thai & Tran Inc. Thai Bao Inc. Thanh Phong. The Boat Phat Tai. The Fishermans Dock. The Last One. The Light House Bait & Seafood Shack LLC. The Mayporter Inc. The NGO. The Seafood Shed. Thelma J Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Theresa Seafood Inc. Third Tower Inc. Thomas Winfield—Capt Nathan. Thompson Bros. Three C's. Three Dads. Three Sons. Three Sons Inc. Three Sons Inc. Thunder Roll. Thunderbolt Fisherman's Seafood Inc. Thy Tra Inc. Thy Tra Inc. Tidelands Seafood Co Inc. Tiffani Claire Inc. Tiffani Claire Inc. Tiger Seafood. Tikede Inc. Timmy Boy Corp. Tina Chow. Tina T LLC. Tino Mones Seafood. TJ's Seafood. Toan Inc. Todd Co. Todd's Fisheries. Tom LE LLC. Tom Le LLC. Tom N & Bill N Inc. Tommy Bui dba Mana II. Tommy Cheramie Inc. Tommy Gulf Sea Food Inc. Tommy's Seafood Inc. Tonya Jane Inc. Tony-N. Tookie Inc. Tot & Linda Inc. T-Pops Inc. Tran Phu Van. Tran's Express Inc. Travis—Shawn. Travis—Shawn. Trawler Azteca. Trawler Becky Lyn Inc. Trawler Capt GC. Trawler Capt GC II. Trawler Dalia. Trawler Doctor Bill. Trawler Gulf Runner. Trawler HT Seaman. Trawler Joyce. Trawler Kristi Nicole. Trawler Kyle & Courtney. Trawler Lady Catherine. Trawler Lady Gwen Doe. Trawler Linda B Inc. Trawler Linda June. Trawler Little Brothers. Trawler Little Gavino. Trawler Little Rookie Inc. Trawler Mary Bea. Trawler Master Alston. Trawler Master Jeffrey Inc. Trawler Michael Anthony Inc. Trawler Mildred Barr. Trawler Miss Alice Inc. Trawler Miss Jamie. Trawler Miss Kelsey. Trawler Miss Sylvia Inc. Trawler Mrs Viola. Trawler Nichols Dream. Trawler Raindear Partnership. Trawler Rhonda Kathleen.

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Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros Seafood. Weems Bros Seafood Co. Weiskopf Fisheries LLC. Wendy & Eric Inc. Wescovich Inc. West Point Trawlers Inc. Westley J Domangue. WH Blanchard Inc. Whiskey Joe Inc. White and Black. White Bird. White Foam. White Gold. Wilcox Shrimping Inc. Wild Bill. Wild Eagle Inc. William E Smith Jr Inc. William Lee Inc. William O Nelson Jr. William Patrick Inc. William Smith Jr Inc. Willie Joe Inc. Wind Song Inc. Wonder Woman. Woods Fisheries Inc. Woody Shrimp Co Inc. Yeaman's Inc. Yen Ta. Yogi's Shrimp. You & Me Shrimp. Ysclaskey Seafood. Zirlott Trawlers Inc. Zirlott Trawlers Inc.

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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 in the Northeast Pacific Ocean; Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XA144]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Northeast Pacific Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Lamont-Doherty Earth Observatory of Columbia University (L-DEO) to incidentally harass, by Level A and Level B harassment, marine mammals during a marine geophysical survey in the northeast Pacific Ocean.

DATES: This Authorization is effective from May 19, 2021 through May 18, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:**Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

Summary of Request

On November 8, 2019, NMFS received a request from L-DEO for an IHA to take marine mammals incidental to a marine geophysical survey of the Cascadia Subduction Zone off the coasts of Washington, Oregon, and British Columbia, Canada. The application was deemed adequate and complete on March 6, 2020. L-DEO’s request is for take of small numbers of 31 species of marine mammals by Level A and Level B harassment. NMFS published a notice of proposed IHA for public review and comment on April 7, 2020 (85 FR 19580). On May 29, 2020, L-DEO informed NMFS that the project had been delayed by one year and would begin in June 2021.

Description of Proposed Activity*Overview*

Researchers from L-DEO, Woods Hole Oceanographic Institution (WHOI), and the University of Texas at Austin Institute of Geophysics (UTIG), with funding from the National Science Foundation (NSF), and in collaboration with researchers from Dalhousie University and Simon Fraser University (SFU) plan to conduct a high-energy seismic survey from the Research Vessel (R/V) *Marcus G Langseth* (Langseth) in the northeast Pacific Ocean beginning in June 2021. The seismic survey will be conducted at the Cascadia Subduction Zone off the coasts of Oregon, Washington, and British Columbia, Canada. The proposed two-dimensional (2-D) seismic survey will occur within the Exclusive Economic Zones (EEZs) of Canada and the United States, including U.S. state waters and Canadian territorial waters. The survey will use a 36-airgun towed array with a total discharge volume of ~6,600 cubic inches (in³) as an acoustic source, acquiring return signals using both a towed

streamer as well ocean bottom seismometers (OBSs) and ocean bottom nodes (OBNs).

The planned study will use 2-D seismic surveying and OBSs and OBNs to investigate the Cascadia Subduction Zone and provide data necessary to illuminate the depth, geometry, and physical properties of the seismogenic portion and updip extent of the megathrust zone between the subducting Juan de Fuca plate and the overlying accretionary wedge/North American plate. These data will provide essential constraints for earthquake and tsunami hazard assessment in this heavily populated region of the Pacific Northwest. The primary objectives of the survey planned by researchers from L-DEO, WHOI, and UTIG is to characterize: (1) The deformation and topography of the incoming plate; (2) the depth, topography, and reflectivity of the megathrust; (3) sediment properties and amount of sediment subduction; and (4) the structure and evolution of the accretionary wedge, including geometry and reflectivity of fault networks, and how these properties vary along strike, spanning the full length of the margin and down dip across what may be the full width of the Cascadia Subduction Zone.

Dates and Duration

The survey is expected to last for 40 days, with 37 days of seismic operations, 2 days of equipment deployment, and 1 day of transit. R/V *Langseth* will likely leave out of and return to port in Newport, Oregon, during June–July 2021.

Specific Geographic Region

The survey will occur within ~42–51° N, ~124–130° W. Planned survey tracklines are shown in Figure 1. Some deviation in actual track lines, 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 survey will occur within the EEZs of the United States and Canada, as well as in U.S. state waters and Canadian territorial waters, ranging in depth 60–4400 meters (m). A maximum of 6,540 kilometers (km) of transect lines will be surveyed. Most of the survey (69 percent) will occur in deep water (>1,000 m), 28 percent will occur in intermediate water (100–1,000 m deep), and 3 percent will take place in shallow water <100 m deep. Approximately 3.6 percent of the transect lines (234 km) will be undertaken in Canadian territorial waters (from 0–12 nautical miles (22.2 km) from shore), with most

effort in intermediate water depths. NMFS cannot authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters.

However, NMFS has still calculated the level of incidental take in the entire activity area (including Canadian territorial waters) as part of the analysis supporting our determination under the

MMPA that the activity will have a negligible impact on the affected species.

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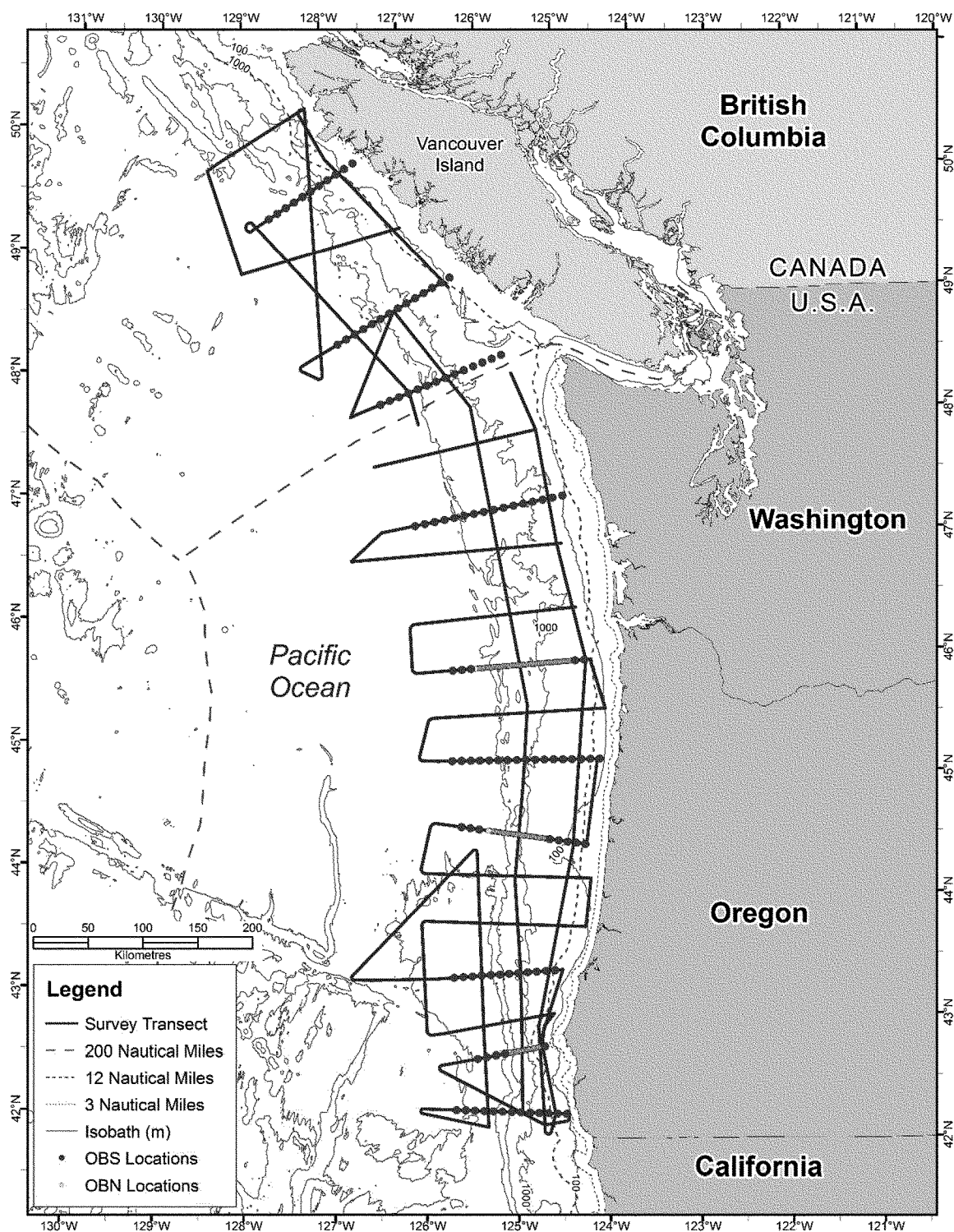


Figure 1. Location of the Planned Seismic Survey in the Northeast Pacific Ocean

Detailed Description of Specific Activity

The procedures to be used for the planned survey will be similar to those used during previous seismic surveys by L-DEO and will use conventional seismic methodology. The surveys will involve one source vessel, R/V *Langseth*. R/V *Langseth* will deploy an array of 36 airguns as an energy source with a total volume of ~6,600 in³. The array consists of 20 Bolt 1500LL airguns with volumes of 180 to 360 in³ and 16 Bolt 1900LLX airguns with volumes of 40 to 120 in³. The airgun array configuration is illustrated in Figure 2–11 of NSF and USGS's Programmatic Environmental Impact Statement (PEIS; NSF-USGS, 2011). The vessel speed during seismic operations will be approximately 4.2 knots (~7.8 km/hour) during the survey and the airgun array will be towed at a depth of 12 m. The receiving system will consist of one 15-km long hydrophone streamer, OBSs, and OBNs. R/V *Oceanus*, which is owned by NSF and operated by Oregon State University, will be used to deploy the OBSs and OBNs. As the airguns are towed along the survey lines, the hydrophone streamer will transfer the data to the on-board processing system, and the OBSs and OBNs will receive and store the returning acoustic signals internally for later analysis.

Long 15-km-offset multichannel seismic (MCS) data will be acquired along numerous 2-D profiles oriented perpendicular to the margin and located to provide coverage in areas inferred to be rupture patches during past earthquakes and their boundary zones. The survey will also include several strike lines including one continuous line along the continental shelf centered roughly over gravity-inferred fore-arc basins to investigate possible segmentation near the down-dip limit of the seismogenic zone. The margin normal lines will extend ~50 km seaward of the deformation front to image the region of subduction bend faulting in the incoming oceanic plate, and landward of the deformation front to as close to the shoreline as can be safely maneuvered. L-DEO plans to survey the southern transects off Oregon first, followed by the profiles off Washington and Vancouver Island, British Columbia.

The OBSs will consist of short-period multi-component OBSs from the Ocean Bottom Seismometer Instrument Center (OBSIC) and a large-N array of OBNs from a commercial provider to record shots along ~11 MCS margin-perpendicular profiles. OBSs will be deployed at 10-km spacing along ~10 profiles from Vancouver Island to

Oregon, and OBNs will be deployed at a 500-m spacing along a portion of three profiles off Oregon. Two OBS deployments will occur with a total of 115 instrumented locations. 60 OBSs will be deployed to instrument seven profiles off Oregon, followed by a second deployment of 55 OBSs to instrument four profiles off Washington and Vancouver Island. The first deployment off Oregon will occur prior to the start of the planned survey, after which R/V *Langseth* will acquire data in the southern portion of the study area. R/V *Oceanus* will start recovering the OBSs from deployment 1, and then re-deploy 55 OBSs off Washington and Vancouver Island, so that R/V *Langseth* can acquire data in the northern portion of the survey area. The OBSs have a height and diameter of ~1 m, and an ~80 kilogram (kg) anchor. To retrieve OBSs, an acoustic release transponder (pinger) is used to interrogate the instrument at a frequency of 8–11 kilohertz (kHz), and a response is received at a frequency of 11.5–13 kHz. The burn-wire release assembly is then activated, and the instrument is released to float to the surface from the anchor, which is not retrieved.

A total of 350 OBNs will be deployed: 179 nodes along one transect off northern Oregon, 107 nodes along a second transect off central Oregon, and 64 nodes along a third transect off southern Oregon. The nodes are not connected to each other; each node is independent from each other, and there are no cables attached to them. Each node has internal batteries; all data is recorded and stored internally. The nodes weigh 21 kg in air (9.5 kg in water). As the OBNs are small (330 millimeters (mm) × 289 mm × 115 mm), compact, not buoyant, and lack an anchor-release mechanism, they cannot be deployed by free-fall as with the OBSs. The nodes will be deployed and retrieved using a remotely operated vehicle (ROV); the ROV will be deployed from R/V *Oceanus*. OBNs will be deployed approximately 17 days prior to the start of the R/V *Langseth* cruise. The ROV will be fitted with a skid with capacity for 32 units, lowered to the seafloor, and towed at a speed of 0.6 knots at 5–10 m above the seafloor between deployment sites. After the 32 units are deployed, the ROV will be retrieved, the skid will be reloaded with another 32 units, and sent back to the seafloor for deployment, and so on. The ROV will recover the nodes 3 days after the completion of the R/V *Langseth* cruise. The nodes will be recovered one by one by a suction mechanism. Take of marine mammals is not expected to

occur incidental to L-DEO's use of OBSs and OBNs.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP) will be operated from R/V *Langseth* continuously during the seismic surveys, but not during transit to and from the survey area. All planned geophysical data acquisition activities will be conducted by L-DEO with on-board assistance by the scientists who have planned the studies. The vessel will be self-contained, and the crew will live aboard the vessel. Take of marine mammals is not expected to occur incidental to use of the MBES, SBP, or ADCP because they will be operated only during seismic acquisition, and it is assumed that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, 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. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to L-DEO was published in the **Federal Register** on April 7, 2020 (85 FR 19580). During the public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission), Ecojustice (on behalf of the David Suzuki Foundation, Georgia Strait Alliance, Raincoast Conservation Foundation, and World Wildlife Fund Canada), Deep Green Wilderness, and a group of environmental non-governmental organizations (ENGOS) including the Center for Biological Diversity (CBD), Natural Resources Defense Council, Orca Relief Citizens Alliance, Friends of the San Juans, Whale and Dolphin Conservation, Friends of the Earth, Oceana, and Orca Conservancy. NMFS has posted the comments online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. Please see the letters for full details and rationale. A summary of the comments and our responses are provided here.

Comment 1: Ecojustice requested NMFS deny L-DEO's request for an IHA

because the survey will affect Southern Resident killer whale critical habitat (e.g., Swiftsure and La Perouse Banks) designated in Canada under the Canadian Species at Risk Act (SARA). The commenter asserts that noise production in these areas will both harm or harass individuals and constitute destruction of a portion of Canadian critical habitat.

Response: This comment is beyond the scope of NMFS' proposed action, which is to authorize take of marine mammals incidental to the proposed survey. NMFS does not allow or deny the survey itself, and NMFS' action of authorizing incidental take does not cause effects to critical habitat (in Canada or the U.S.). However, as part of their consultation with Canada's Department of Fisheries and Oceans (DFO) under Canada's SARA, L-DEO has removed all survey tracklines with associated ensonified areas that overlap with Canadian designated killer whale critical habitat at Swiftsure and La Perouse Bank (see Figure 1); therefore, the Canadian critical habitat will not be subject to destruction.

Comment 2: Ecojustice asserts that the critically endangered status of Southern Resident killer whales means there is no acceptable level of take for the species. Similarly, the ENGOs recommended NMFS not issue any take authorization until it has effectively reduced the take of Southern Resident killer whales to zero, citing concern that behavioral disturbance can interfere with reproduction and survival due to lost foraging time.

Response: NMFS disagrees that there is no acceptable level of take for Southern Resident killer whales, and the commenters have not demonstrated that any level of taking of Southern Resident killer whales would result in greater than a negligible impact on the stock. However, we do agree that additional effort to reduce impacts to Southern Resident killer whales is warranted to minimize to the extent practicable the amount of taking as well as the impact of taking that is authorized. In addition to removing tracklines within Canadian designated Southern Resident killer whale critical habitat at Swiftsure and La Perouse Banks (discussed above), L-DEO has removed and modified tracklines between Tillamook Head, Oregon and Barkley Sound, British Columbia, the area in which Southern Resident killer whales have the highest estimated densities (U.S. Navy 2019) and high-use foraging areas (NMFS 2019). The effect of these modifications to the survey plan is that, between these landmarks, the estimated Level B harassment

ensonified area will not extend into water shallower than the 100-m depth contour. As a result, the total estimated take of Southern Resident killer whales has been reduced from 43 takes by Level B harassment in the proposed IHA (with an additional two takes within Canadian territorial waters, outside NMFS' jurisdiction) to 10 takes by Level B harassment (plus one take by Level B harassment within Canadian territorial waters), which is less than the population of any pod in the Southern Resident stock. This estimated take represents either 10 individual Southern Resident killer whales taken by Level B harassment once over the course of the survey, or a smaller number of individuals taken multiple times (e.g., a single matriline of five animals taken by Level B harassment on two separate days). By avoiding surveying in the areas with highest expected Southern Resident killer whale presence and foraging rates, the likelihood of survey activities resulting in interference in feeding and migration that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good foraging opportunities or migration routes is greatly reduced. Procedural mitigations that avoid the likelihood of injury, such as shutdown measures, also further reduce the likelihood of more severe behavioral responses.

Comment 3: The ENGOs assert that NMFS inadequately considered the impacts of the proposed action on prey availability for Southern Resident killer whales, citing studies showing responses of fish to sound from seismic surveys. The ENGOs also state that NMFS must also consider the fitness of salmon being indirectly affected by the survey's impacts on herring, a key prey species for Pacific salmon.

Response: NMFS disagrees with the suggestion that we ignored effects to prey species. In fact, we considered relevant literature (including that cited by the ENGOs) in finding that the most likely impact of survey activity to prey species such as fish and invertebrates would be temporary avoidance of an area, with a rapid return to pre-survey distribution and behavior, and minimal impacts to recruitment or survival anticipated. While there is a lack of specific scientific information to allow an assessment of the duration, intensity, or distribution of effects to prey in specific locations at specific times and in response to specific surveys, NMFS' review of the available information does not indicate that such effects could be significant enough to impact marine mammal prey to the extent that marine mammal fitness would be affected. We

agree that seismic surveys could affect certain marine mammal prey species, and addressed these potential effects, as well as the potential for those effects to impact marine mammal populations, in our notice of proposed IHA (85 FR 19580; April 7, 2020). As stated in the notice of proposed IHA, our review of the available information and the specific nature of the activities considered herein suggest that L-DEO's proposed survey 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 prey species are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

For additional information on the effects of L-DEO's proposed survey on salmon species present in the survey area, we refer the reader to the Biological Opinion issued by the NMFS Office of Protected Resources, Interagency Cooperation Division (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>). In summary, 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. While we agree that some 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), our review shows that the weight of evidence indicates either no or only a 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 may be impacts to fish as a result of noise from nearby airguns, any 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 (*e.g.*, 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 (SPLs) 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.* (2012) showed that a temporary threshold shift (TTS) of 4–6 decibel (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 surveys that are necessarily transient in any given location and likely result in brief, infrequent noise exposure to prey species in any given area. For these surveys, 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.

NMFS considered the research referenced by the ENGOs and disagrees with the assertion that “[NMFS] irrationally discounts those impacts,” as well as with the commenters’ interpretation of the literature. 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. Regarding Paxton *et al.* (2017), which describes findings related to the effects of a 2014 seismic survey on a reef off of North Carolina, while the study did show 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 because fish may remain present yet not be recorded on video. In summary, this particular study corroborates prior studies demonstrating a startle response or short-term displacement.

The Carroll *et al.* (2017) 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. 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, the scientific literature demonstrates that impacts of seismic surveys 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 surveys, a rapid return to normal recruitment, distribution, and behavior for prey species is anticipated, and, overall, impacts to prey species, if any, 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 a given survey area would be temporary avoidance of the area. Surveys using towed airgun arrays move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once a 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 most surveys and the likelihood of temporary avoidance behavior suggest that impacts would be minor.

NMFS believes that no evidence is presented to contradict our conclusions regarding likely impacts to marine mammals due to effects on prey species, *i.e.*, 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, and that any effects that do occur are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Finally, we note that the National Science Foundation (NSF) is funding a study run by Oregon State University to assess the effects of L-DEO’s survey activities on rockfish, Dungeness crab, and longnose skate. While the species chosen for this study do not represent important prey species for Southern Resident killer whales, which were the primary concern of the ENGOs, the study will provide important information on the effects of seismic surveys on nearshore species.

Comment 4: The ENGOs commented that in making the negligible impact determination, NMFS underestimated the potential harm to the relevant stocks and distinct population segments (DPSs) of humpback whales, adding that the stock definitions for humpback whales are outdated and should match the DPSs as defined under the Endangered Species Act. The ENGOs assert that the takes proposed by NMFS are more than

negligible for the California/Oregon/Washington stock because the annual rate of serious injury and mortality (40.2 humpback whales per year) exceeds the potential biological removal (PBR; 33.4 humpbacks per year). Additionally, for both humpback and blue whales, the ENGOs assert that take by Level A harassment in the form of permanent hearing impairment amounts to serious injury, therefore the negligible impact determination overly relies on the assumption that there will be no serious injury or mortality from the seismic survey.

Response: First, NMFS agrees that the alignment of MMPA stocks and Endangered Species Act (ESA) DPSs of humpback whales is important, and is actively working on rectifying the differences between stocks and DPSs. However, this issue is outside the scope of the action considered here. NMFS disagrees with the ENGOs' assertion that the authorized take of humpback or blue whales (or any species of marine mammal) by Level A harassment constitutes serious injury or has any relation to the PBR of the stock. PBR is defined in the MMPA (16 U.S.C. 1362(20)) 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" and is a measure to be considered when evaluating the effects of mortality or serious injury on a marine mammal species or stock. There is no evidence that permanent threshold shift (PTS) can lead to mortality such that it should be considered "serious injury" or "removing" an individual from a stock. Therefore, it is not appropriate to use the PBR metric to directly evaluate the effects of Level A harassment (*e.g.*, PTS) on a stock in the manner suggested by the ENGOs. Given the short duration of exposure, only low levels of hearing impairment are likely to occur, and would not affect the fitness of individual marine mammals or populations.

As noted above, the PBR metric concerns levels of allowable removals from a population. Therefore, the PBR metric is not directly related to an assessment of negligible impact for this specified activity, which does not involve any expected potential for serious injury or mortality. PBR is not an appropriate metric with which to evaluate Level B harassment. However, we appropriately do consider levels of ongoing anthropogenic mortality from other sources, such as vessel strike, in relation to calculated PBR values as an important contextual factor in our

negligible impact analysis, but a direct comparison of takes by harassment to the PBR value is not germane. While it is conceptually possible to link disturbance to potential fitness impacts to individuals over time (*e.g.*, population consequences of disturbance), we have no evidence that is the case here and the take authorized here is not expected to affect the reproduction or survivorship of any individual marine mammals.

Comment 5: The ENGOs assert that the negligible impact determination also relies on an expectation that marine mammals would be likely to move away from the sound source, which contradicts other statements from the notice of proposed IHA that avoidance is not assumed to occur because "the extent to which marine mammals would move away from the sound source is difficult to quantify and is therefore not accounted for in the take estimates." The commenters go on to state that animals avoiding the sound source still provokes an adverse behavioral reaction which displaces the animal from preferred habitat and potentially toward predators or shore with a risk of stranding.

Response: NMFS does not rely on avoidance behaviors to make its negligible impact determination. NMFS agrees that avoidance of preferred habitat may temporarily limit optimal feeding or other biologically important behaviors. NMFS does not adjust take estimates based on the assumption that marine mammals would avoid the area, as the avoidance itself may constitute behavioral harassment. However, avoiding the sound source prevents the animal from exposure to the highest source levels, reducing the likelihood of temporary (Level B harassment) or permanent hearing impairment (Level A harassment), and reducing the intensity and/or duration of the harassment event. The avoidance is expected to be temporary, and animals are likely to return to the area after the survey vessel has passed through. In consideration of the likelihood of animals to independently avoid the sound source, and the mitigation requirements to shut down the airgun array if animals do approach within a certain distance, NMFS finds that the level of take expected to result from the survey is unlikely to have any impact on fitness or reproduction of individual animals, let alone populations.

Comment 6: Citing studies suggesting that blue whales are especially sensitive to high intensity anthropogenic noise, such as mid-frequency sonar (*e.g.*, Goldbogen *et al.*, 2013), the ENGOs suggest that NMFS' consideration of the

impact of the proposed activities on blue whales may underestimate the adverse impacts on the stock.

Response: As discussed in the notice of proposed IHA, Goldbogen *et al.* (2013) found blue whales feeding on highly concentrated prey in shallow depths were less likely to respond and cease foraging than whales feeding on deep, dispersed prey when exposed to simulated sonar sources, suggesting that the benefits of feeding for blue whales foraging on high-density prey may outweigh perceived harm from the acoustic stimulus, such as the seismic survey. Southall *et al.* (2019b) observed that after exposure to simulated and operational mid-frequency active sonar, more than 50 percent of blue whales in deep-diving states responded to the sonar, while no behavioral response was observed in shallow-feeding blue whales. Southall *et al.* (2019b) noted that the behavioral responses they observed were generally brief, of low to moderate severity, and highly dependent on exposure context (behavioral state, source-to-whale horizontal range, and prey availability). The proposed survey area does not represent a major feeding area for blue whales and any disruption of feeding is likely to be short-term and of low to sometimes moderate severity, with no anticipated effect on reproduction or survival for individual whales or the population as a whole.

Comment 7: Deep Green Wilderness and the ENGOs noted that North Pacific right whales have been documented within the survey area, and recommended NMFS consider the potential effects of the survey on the species. Deep Green Wilderness referred to sightings of a North Pacific right whale at Swiftsure Bank in 2013, and the ENGOs noted an account of a sighting of a North Pacific right whale off northern Vancouver Island in May 2020.

Response: We thank the organizations for providing information on recent observations of North Pacific right whales in the survey area. NMFS shares the commenters' concern regarding the status of this endangered species. Although sightings have been reported in the survey area, the rate of sightings is less than one per year and NMFS has determined the likelihood of the proposed 37-day survey encountering a North Pacific right whale is discountable. However, in the very unlikely event a North Pacific right whale is detected during the survey, at any distance, L-DEO must immediately shut down the airgun array to prevent exposure to potentially injurious sound levels and to minimize the intensity and

duration of any sound exposure, and must immediately report the observation to NMFS and Canada's DFO to further inform research on the distribution of the species.

Comment 8: The ENGOs challenge NMFS' preliminary finding that the proposed take numbers are of no more than small numbers of marine mammals. The ENGOs reference a court decision that they assert supports a lower "small numbers" threshold, and highlight certain species for which the commenters deem the take to be too high.

Response: The reference to a supposed take limit of 12 percent for small numbers comes from a 2003 district court opinion (*Natural Resources Defense Council v. Evans*, 279 F. Supp. 2d 1129 (N.D. Cal. 2003)). However, given the particular administrative record and circumstances in that case, including the fact that our small numbers finding for the challenged incidental take rule was based on an invalid regulatory definition of small numbers, we view the district court's opinion regarding 12 percent as dicta. Moreover, since that time the Ninth Circuit Court of Appeals has upheld a small numbers finding that was not based on a quantitative calculation. *Center for Biological Diversity v. Salazar*, 695 F.3d 893 (9th Cir. 2012). To maintain an interpretation of small numbers as a proportion of a species or stock that does not conflate with negligible impact, we use the following framework. A plain reading of "small" implies as corollary that there also could be "medium" or "large" numbers of animals from the species or stock taken. We therefore use a simple approach that establishes equal bins corresponding to small, medium, and large proportions of the population abundance.

NMFS's practice for making small numbers determinations is to compare the number of individuals estimated and authorized to be taken (often using estimates of total instances of take, without regard to whether individuals are exposed more than once) against the best available abundance estimate for that species or stock. We note, however, that although NMFS's implementing regulations require applications for incidental take to include an estimate of the marine mammals to be taken, there is nothing in paragraphs (A) or (D) of section 101(a)(5) that requires NMFS to quantify or estimate numbers of marine mammals to be taken for purposes of evaluating whether the number is small. (See *CBD v. Salazar*.) While it can be challenging to predict the numbers of individual marine mammals that will be

taken by an activity (again, many models calculate instances of take and are unable to account for repeated exposures of individuals), in some cases we are able to generate a reasonable estimate utilizing a combination of quantitative tools and qualitative information. When it is possible to predict with relative confidence the number of individual marine mammals of each species or stock that are likely to be taken, the small numbers determination should be based directly upon whether or not these estimates exceed one third of the stock abundance. In other words, consistent with past practice, when the estimated number of individual animals taken (which may or may not be assumed as equal to the total number of takes, depending on the available information) is up to, but not greater than, one third of the species or stock abundance, NMFS will determine that the numbers of marine mammals taken of a species or stock are small.

Finally, regarding the species highlighted by the ENGOs with proposed take above 20 percent of the stock (Pacific white-sided dolphin, Risso's dolphin, pygmy and dwarf sperm whale, Dall's porpoise, harbor porpoise, northern fur seal and harbor seal), the revised take estimates for all of the aforementioned stocks aside from the California/Oregon/Washington stock of Dall's porpoise and Northern Oregon/Washington Coast stock of harbor porpoise represent under one-third of the stock. The analysis of these two stocks is discussed further in the Small Numbers section of this notice.

Comment 9: The ENGOs further object to NMFS' small numbers determination for the Southern Resident killer whale, for which NMFS proposed to authorize take of more than 57 percent of the stock. Regarding the Southern Resident killer whale take estimate, the ENGOs disagree with NMFS' assumption that the number of individual Southern Resident killer whales taken by Level B harassment will be fewer than the total estimated instances of take due to the historical pattern of Southern Resident killer whales occupying the inland waters of the Salish Sea during the summer months. Additionally, because they travel in pods, the commenters assert that there is risk of exposure of an entire pod to airgun blasting, and state that they are unclear whether such aggregation has been considered.

Response: The ENGO's objection to NMFS' small numbers threshold was addressed in the previous response, but we also note here that using the revised survey tracklines, the authorized take of Southern Resident killer whales

represents only 13.7 percent of the stock, which falls under NMFS' threshold for small numbers, even if all takes represent different individuals taken by Level B harassment. The authorized take is less than the size of any pod of Southern Residents (J, K, or L pods), and is more likely to represent a single matriline (typically two to nine killer whales; Weiss *et al.*, 2020) exposed to the survey on one or two days of the survey. NMFS agrees that the seasonal distribution of Southern Resident killer whales in recent years has deviated from the historical pattern of residency within the Salish Sea (*e.g.*, Shields *et al.*, 2018), but note that our discussion of the distribution of Southern Resident killer whales was in the context of the U.S. Navy density models used to estimate take, which were created with the assumption that the entire population was either within the Salish Sea or outside the Salish Sea on the outer coast at any given time (U.S. Navy 2019). Southern Resident killer whales may be encountered during the survey along the coast, but the revised tracklines are expected to reduce the likelihood of whole pods being exposed to sound from the seismic survey by avoiding surveying in areas of expected high Southern Resident killer whale occurrence. Additionally, L-DEO is required to shut down the airgun array if killer whales (of any ecotype) are observed at any distance. Killer whales are highly visible animals, especially when traveling as large pods as the ENGOs suggest, and we expect PSOs will be able to detect killer whales at sufficient distances to implement shutdown procedures to avoid exposing large pods of killer whales to sounds from the survey.

Comment 10: The ENGOs commented that NMFS must include estimated takes off Canada in making the small numbers determination, adding that since the take prohibition applies outside U.S. waters, the Service must make a small numbers determination that analyzes all of the estimated take. The commenters state that, accordingly, NMFS must demonstrate compliance with these standards and may not issue the authorization without fully analyzing and authorizing all take contemplated under this action. The commenters also state that it is unclear in the small numbers determination whether the takes in Canadian waters have been taken into consideration. The ENGOs also expressed concern that the small numbers determination was based on 1 year of activities and did not consider

the potential renewal of the authorization.

Response: NMFS has not authorized any take of marine mammals within the territorial waters of Canada. An estimate of take that may occur within Canadian territorial waters is presented in Table 11, and the take has been considered in our negligible impact determination as part of the larger implications of the survey on the marine mammal populations and habitat in the survey area. However, our small numbers analysis applies only to the take we have authorized. NMFS has made the necessary small numbers and negligible impact determinations for this authorization.

The ENGOs appear to misunderstand the context in which a potential renewal IHA could be issued for this activity, as well as the requirements for issuing a renewal IHA. Although renewal IHAs in general may be issued in appropriate circumstances for up to another year of identical or nearly identical activities as were covered by the initial IHA, this context is not relevant to the proposed seismic survey. L-DEO would not conduct the survey as planned and then duplicate the survey activities in a subsequent year. Regardless, NMFS would not grant a renewal IHA in those circumstances. However, if the planned survey were unexpectedly delayed for another year, NMFS could consider a request for issuance of a renewal IHA. In order to do so, NMFS would need to review all relevant information, including the status of the affected species or stocks and any other pertinent information, such as information relevant to the small numbers determination. In short, potential consideration of a renewal in this context would necessarily be associated with the same activity associated with this IHA, in the event that it is not conducted during the period of effectiveness for this IHA, and would entail a review of all relevant information to ensure that the findings NMFS has made in support of issuance of this initial IHA remain valid.

Comment 11: The ENGOs recommended NMFS analyze the effects of L-DEO's use of a multi-beam echosounder (MBES) associated with the survey, noting that the proposed equipment (the Kongsberg Simrad E122) is similar to another Kongsberg system that was closely associated with a 2008 mass stranding of melon-headed whales in Madagascar. The ENGOs recommended NMFS apply its take threshold for continuous noise sources (120 dB) rather than its threshold for intermittent sources (160 dB) to the proposed system and revise its take

estimates accordingly. Further, NMFS should not assume, for purposes of making its negligible impact determinations, that the severity of impacts from an airgun array operating concurrently with such an echosounder system would be equivalent to that of an airgun array operating alone.

Response: Although it is correct that an investigation of the stranding event referenced by the ENGOs indicated that use of a high-frequency mapping system (12-kilohertz (kHz) MBES) was the most plausible and likely initial behavioral trigger of the event (with the caveat that there was no unequivocal and easily identifiable single cause), the panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales (Southall *et al.*, 2013). Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site. This may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. Shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may also have played a role. The risk of similar events recurring is expected to be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported. The only report of a stranding that may be associated with this type of sound source is the one reported in Madagascar.

NMFS disagrees with the recommendation that the 120 dB threshold should be applied to estimate takes incidental to use of the MBES. Sound sources can be divided into broad categories based on various criteria or for various purposes. As discussed by Richardson *et al.* (1995), source characteristics include strength of signal amplitude, distribution of sound frequency and, importantly in context of these thresholds, variability over time. With regard to temporal properties, sounds are generally considered to be either continuous or transient (*i.e.*, intermittent). Continuous sounds, which are produced by the industrial noise sources for which the 120-dB behavioral harassment threshold was selected, are simply those whose sound pressure level remains above

ambient sound during the observation period (ANSI, 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Simply put, a continuous noise source produces a signal that continues over time, while an intermittent source produces signals of relatively short duration having an obvious start and end with predictable patterns of bursts of sound and silent periods (*i.e.*, duty cycle) (Richardson and Malme, 1993). It is this fundamental temporal distinction that is most important for categorizing sound types in terms of their potential to cause a behavioral response. For example, Gomez *et al.* (2016) found a significant relationship between source type and marine mammal behavioral response when sources were split into continuous (*e.g.*, shipping, icebreaking, drilling) versus intermittent (*e.g.*, sonar, seismic, explosives) types. In addition, there have been various studies noting differences in responses to intermittent and continuous sound sources for other species (*e.g.*, Neo *et al.*, 2014; Radford *et al.*, 2016; Nichols *et al.*, 2015).

Sound sources may also be categorized based on their potential to cause physical damage to auditory structures and/or result in threshold shifts. In contrast to the temporal distinction discussed above, the most important factor for understanding the differing potential for these outcomes across source types is simply whether the sound is impulsive or not. Impulsive sounds, such as those produced by airguns, are defined as sounds which are typically transient, brief (<1 second (sec)), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). These sounds are generally considered to have greater potential to cause auditory injury and/or result in threshold shifts. Non-impulsive sounds can be broadband, narrowband or tonal, brief or prolonged, continuous or intermittent, and typically do not have the high peak pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998). Because the selection of the 160-dB behavioral threshold was focused largely on airgun signals, it has historically been commonly referred to as the "impulse noise" threshold (including by NMFS). However, this longstanding confusion in terminology—*i.e.*, the erroneous impulsive/continuous dichotomy—presents a narrow view of the sound sources to which the thresholds apply, and inappropriately implies a limitation in scope of applicability for the 160-dB behavioral threshold in particular.

An impulsive sound is by definition intermittent; however, not all intermittent sounds are impulsive. Many sound sources for which it is generally appropriate to consider the authorization of incidental take are in fact either impulsive (and intermittent) (e.g., impact pile driving) or continuous (and non-impulsive) (e.g., vibratory pile driving). However, scientific sonars (such as MBESs) present a less common case where the sound produced is considered intermittent but non-impulsive. We note also the commenters' assertion that the system produces "virtually continuous noise output" in support of their recommendation to apply the continuous noise threshold to evaluation of this source. In context of marine mammal hearing, this would mean that the interval between signals would not be discernible to the animal, rendering them effectively continuous. However, echosounder signals are emitted in a similar fashion as odontocete echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (e.g., Au *et al.*, 1988; Dolphin *et al.*, 1995; Supin and Popov, 1995; Mooney *et al.*, 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive echosounder signals as being continuous.

Given the existing paradigm—dichotomous thresholds appropriate for generic use in evaluating the potential for behavioral harassment resulting from exposure to continuous or intermittent sound sources—the ENGOs do not adequately explain why potential harassment from an intermittent sound source should be evaluated using a threshold developed for use with continuous sound sources. Therefore, we have not reevaluated L-DEO's use of the MBES using the 120 dB continuous noise threshold.

As discussed in the notice of proposed IHA, due to the lower source level of the MBES relative to the R/V *Langseth's* airgun array, sounds from the MBES are expected to be effectively subsumed by the sounds from the airgun array when both sources are operational. Thus, NMFS has determined that any marine mammal potentially exposed to sounds from the MBES would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water, when both sources are operational. NMFS has determined that, given the movement and speed of the vessel and the intermittent and narrow

downward-directed nature of the sounds emitted by the MBES (each ping emitted by the MBES consists of eight (in water >1,000 m deep) or four (<1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft), the MBES would result in no more than one or two brief ping exposures to any individual marine mammal, if any exposure were to occur. The ENGOs do not offer any evidence in support of their contention that potentially greater impacts than we have considered should be assumed likely in relation to use of this source.

Comment 12: The ENGOs comment that NMFS has failed to implement "means of effecting the least practicable impact" on marine mammals and assert that NMFS relies on mitigation measures that are known to be ineffective (e.g., real-time detection-based measures).

Response: Under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses (hereinafter referred to as least practicable adverse impact). NMFS does not have a regulatory definition for least practicable adverse impact.

NMFS disagrees with the assertion that we have failed to meet the least practicable adverse impact standard in this case. NMFS considered all recommended mitigation in the context of both the reduction of impacts on marine mammal species and stocks and their habitat and the practicability of such mitigation in reaching the required set of measures that we believe satisfy the least practicable adverse impact standard.

NMFS' evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measures for applicant implementation.

Practicability of implementation may consider such things as cost, impact on activities, personnel safety, and practicality of implementation.

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks and their habitat, NMFS recognizes that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. NMFS also acknowledges that there is always the potential that new information, or a new recommendation that had not previously been considered, becomes available and necessitates re-evaluation of mitigation measures to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability) and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species and practicability of implementation are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability, can

vary widely. For example, a time-area restriction could be of very high value for reducing the potential for, or severity of, population-level impacts (*e.g.*, avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.*, decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the operator's ability to acquire necessary data (higher impact), or it could mean incremental delays that increase operational costs but still allow the activity to be conducted (lower impact). A responsible evaluation of "least practicable adverse impact" will consider the factors along these realistic scales. Expected effects of the activity and of the mitigation as well as status of the stock all weigh into these considerations. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or their habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. Consideration of these factors is discussed in greater detail below.

1. Reduction of Adverse Impacts to Marine Mammal Species or Stocks and Their Habitat

The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: Avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to

these types of disruptions; and limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that are expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: The stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the PBR level; the affected species or stock is a small, resident population; or the stock is involved in a UME or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

NMFS considers available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has

not typically been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

2. Practicability

Factors considered may include those costs, impact on activities, personnel safety, and practicality of implementation.

In carrying out the MMPA's mandate for this action, NMFS applies the previously described context-specific balance between the manner in which and the degree to which measures are expected to reduce impacts to the affected species or stocks and their habitat and practicability for operators. The effects of concern (*i.e.*, those with the potential to adversely impact species or stocks and their habitat), addressed previously in the Potential Effects of the Specified Activity on Marine Mammals and Their Habitat section of the notice of proposed IHA, include auditory injury, severe behavioral reactions, disruptions of critical behaviors, and to a lesser degree, masking and impacts on acoustic habitat. Here, we focus on measures with proven or reasonably presumed ability to avoid or reduce the intensity of acute exposures that have potential to result in these anticipated effects with an understanding of the drawbacks or costs of these requirements, as well as time-area restrictions that would avoid or reduce both acute and chronic impacts. To the extent of the information available to NMFS, we considered practicability concerns, as well as potential undesired consequences of the measures, *e.g.*, extended periods using the acoustic source due to the need to reshoot lines. NMFS also recognizes that instantaneous protocols, such as shutdown requirements, are not capable of avoiding all acute effects, and are not suitable for avoiding many cumulative or chronic effects and do not provide targeted protection in areas of greatest importance for marine mammals. Therefore, in addition to a basic suite of seismic mitigation protocols, we also consider measures that may or may not be appropriate for other activities (*e.g.*, survey plan modifications specific to the action discussed herein), but that are warranted here given the potential for impacts to a stock of particular concern (*i.e.*, Southern Resident killer whales) (see Negligible Impact Analysis and Determination), and the information we have regarding habitat for certain species.

We appreciate the ENGOs suggestions for additional mitigation and monitoring

requirements. However, we note that many of the recommendations require a scale of effort that is not commensurate to the scale of either the underlying activities or the anticipated impacts of the activities on marine mammals covered by this authorization. In other words, many of the recommended measures would necessitate complex and expensive survey designs and methods that are not reasonable in the context of an activity that consists of one mobile source moving across a large area and that will last for only 37 days. As described in the *Mitigation Measures Considered but Eliminated* section of this notice, out of concern for the status of Southern Resident killer whales and proposed critical habitat, NMFS considered implementing a closure area and prohibiting L-DEO from conducting survey operations between the 200-m isobath and the coastline. However, as the main goal of L-DEO's survey is to examine the geologic features of the Cascadia subduction zone along the coastal shelf, NMFS determined that this exclusion would not be practicable. NMFS did ultimately incorporate mitigation measures that are specific to this action and beyond that which is typically required for L-DEO's surveys. Specifically, we have required L-DEO to revise their proposed tracklines to avoid surveying in waters less than 100 m deep in areas with highest estimated Southern Resident killer whale occurrence. We have determined this measure, which will significantly reduce impacts to Southern Resident killer whales while allowing L-DEO to complete its survey objectives, to be practicable. Additionally, L-DEO must use a second vessel traveling ahead of the R/V *Langseth* with additional PSOs to increase the likelihood of detecting Southern Resident killer whales and, therefore, allowing for greater efficacy in implementing shutdown procedures to minimize impacts to animals that may be in the area. Regardless of whether other monitoring plans suggested by the ENGOs would also suffice, NMFS has determined that the mitigation and monitoring required as part of this authorization meets the MMPA requirement for least practicable adverse impact.

Comment 13: The ENGOs suggested NMFS should work with L-DEO and explore ways to conduct the survey without ensonifying designated and proposed Southern Resident killer whale critical habitat, or at minimum, prohibit ramp-up in the proposed and designated critical habitat unless the location of all three pods of Southern Resident killer whales is known to be

within the Salish Sea or in an area not impacted by survey activity on each day of the survey.

Response: As discussed above, NMFS considered prohibiting L-DEO from operating within the proposed critical habitat for Southern Resident killer whales, but determined that the exclusion was not practicable, as it would prevent L-DEO from completing their survey objectives. NMFS has worked with L-DEO to revise the survey tracklines to avoid ensonifying waters less than 100 m deep above the Level B harassment threshold, between Tillamook Head, Oregon and Barkley Sound, British Columbia. As stated above, this area contains the highest estimated density of Southern Resident killer whales. NMFS has not required L-DEO to confirm the location of Southern Resident killer whales before beginning survey activities each day as the location of all three pods is often unknown and waiting for confirmation would not allow L-DEO to complete their research objectives. L-DEO is required to contact several entities (including NMFS, Canada's DFO, Orca Network, and the Whale Museum) on each day of the survey to obtain any recent reports of Southern Resident killer whales in the survey area.

Comment 14: The ENGOs suggested NMFS should consider closures or limits on survey activity in proposed humpback whale critical habitat and biologically important areas for blue whales.

Response: The revised tracklines mentioned above, while primarily intended to avoid areas of highest Southern Resident killer whale occurrence, also reduce survey tracklines in recently finalized humpback whale critical habitat (86 FR 21082; April 21, 2021) and BIAs for humpback whales and other marine mammals (we note that no BIAs for blue whales have been identified in the survey area). Eliminating all tracklines in humpback whale critical habitat would prevent L-DEO from completing their research objectives, as the proposed critical habitat occupies most of the continental shelf area off of the west coast of the U.S., the key area for L-DEO's research. Additionally, the ENGOs do not provide any substantive reasoning for why prohibiting L-DEO from operating within humpback whale critical habitat or BIAs is warranted. As discussed in the Negligible Impact Analysis and Determination section of this notice, L-DEO's activity is not expected to have a lasting physical impact on humpback whale critical habitat, prey within it, or overall humpback whale fitness.

Comment 15: In addition to vessel-based passive acoustic monitoring (PAM), the ENGOs suggested NMFS should require the use of existing moored passive acoustic monitoring systems and installation of temporary hydrophones or sonabuys in the survey area to monitor marine mammal presence.

Response: NMFS appreciates the suggestions regarding increasing acoustic monitoring. However, the existing network of acoustic recorders along the Washington coast is comprised of archival recorders, which are not monitored in real-time. While the deployment of temporary hydrophones and sonabuys in the survey area may aid in detection and monitoring of marine mammals, NMFS does not expect that any additional protection would outweigh the cost and practicability concerns associated with additional personnel required to monitor the systems and relay detections to the research vessel. The use of on-board PAM will adequately alert L-DEO of vocalizing marine mammals in the immediate vicinity of the survey activity.

Comment 16: The ENGOs recommended NMFS should require the use of a support vessel traveling ahead of the R/V *Langseth* in proposed critical habitat for humpback whales and biologically important areas (BIAs) for other cetaceans.

Response: The support vessel referenced by the ENGOs is required to travel approximately 5 km ahead of the R/V *Langseth* while surveying in waters 200 m or less between Tillamook Head, Oregon and Barkley Sound, British Columbia (see Mitigation section of this notice). This area encompasses much of the critical habitat for humpback whales and biologically important areas for other species (e.g., gray whale BIA for migration). The area of the humpback whale critical habitat expected to be surveyed on a given day is only a small portion of the overall critical habitat along the coast. Any impacts to marine mammals in this area are expected to be minor and temporary, and any additional protection that may be provided by requiring L-DEO to use the support vessel outside of the 200-m isobath is not warranted in the context of the expected effects and practicability concerns.

Comment 17: The ENGOs suggested NMFS should prohibit survey activity in low-visibility conditions.

Response: NMFS disagrees that survey activity should be prohibited in low-visibility conditions. Any requirement to cease operations during low visibility conditions, including at

night, would not only be impracticable, it would also likely result in greater impacts to marine mammals, as such a measure would require operations to continue for significantly more time, to make up for lost operations during low-visibility times. Ramp-up of the acoustic source, when necessary, may occur at times of poor visibility (including nighttime), assuming that a pre-clearance period has been observed. If the pre-clearance period occurs at nighttime, the pre-clearance watch would be conducted only by the acoustic observer.

Comment 18: The ENGOs suggested NMFS should consider whether aerial observations would have less impact (than the support vessel).

Response: Similar to the suggestion of deploying additional PAM systems above, NMFS has determined it is not practicable to require L-DEO to use aerial monitoring systems. NMFS does not expect that any additional protection would outweigh the cost and practicability of additional personnel required to monitor the systems and relay detections to the research vessel.

Comment 19: The ENGOs suggested the 1,500-meter exclusion zone, which is required for beaked whales, should apply for other marine mammal species that they suggest are particularly sensitive — such as harbor porpoises, Steller sea lions, baleen whales (except gray whales) and Southern Resident killer whales. The commenters suggest that the presence of Southern Residents should trigger a shut-down whenever they are detected, regardless of distance.

Response: NMFS disagrees that a larger standard exclusion zone is warranted for the species and groups suggested by the ENGOs. The standard exclusion zone for all marine mammals included in the IHA is 500 m, with larger exclusion zones or shutdown requirements for certain species and/or scenarios. NMFS' intent in prescribing a standard exclusion zone distance is to (1) encompass zones for most species within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (e.g., panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency and ease of implementation for protected species observers (PSOs), who need to monitor and implement the exclusion zone; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions. The use of 500 m as the zone is not based directly on any quantitative

understanding of the range at which auditory injury would be entirely precluded or any range specifically related to disruption of behavioral patterns. Rather, NMFS believes it is based on a reasonable combination of factors. In summary, a practicable criterion such as this has the advantage of familiarity and simplicity while still providing in most cases a zone larger than relevant auditory injury zones, given realistic movement of source and receiver. Increased shutdowns, without a firm idea of the outcome the measure seeks to avoid, simply displace survey activity in time and increase the total duration of acoustic influence as well as total sound energy in the water, which NMFS seeks to avoid. In keeping with the four broad goals outlined above, and in context of the information given here, the standard 500-m exclusion zone is appropriate. The ENGOs do not provide any substantive reasoning for a larger zone.

The proposed IHA included the requirement to shut down the airgun array if killer whales (of any ecotype) are visually or acoustically detected at any distance and NMFS has retained this requirement in the final authorization.

Comment 20: The ENGOs suggested NMFS should require L-DEO to use the lowest practicable source level for airgun usage.

Response: L-DEO has selected the equipment necessary to achieve their research objectives. We have evaluated the specified activity as defined by the applicant, including changes agreed-upon with NMFS in order to provide additional protection for Southern Resident killer whales, and made the necessary findings to authorize taking of marine mammals incidental to L-DEO's survey activities. We also note that an expert panel was convened by the Bureau of Ocean Energy Management to determine whether it would be feasible to develop standards to determine a lowest practicable source level. The panel determined that it would not be reasonable or practicable to develop such metrics (see Appendix L in BOEM, 2017).

Comment 21: The ENGOs suggested NMFS should require in situ sound source verification to determine accurate exclusion zones. Similarly, the Commission recommended NMFS require L-DEO analyze the data recorded on the OBSs and OBNs to determine the extents of the Level B harassment zones in shallow-, intermediate-, and deep-water depths and specify how the in-situ zones compare to the Level B harassment

zones specified in the final authorization.

Response: As stated above, the exclusion zones are not necessarily based on specific acoustic parameters, thus sound source verification is not necessary in the context of exclusion zones. Regarding the Commission's recommendation to conduct analysis of OBS data, L-DEO has not previously undertaken the type of analysis suggested by the Commission, and indicated to NMFS that it does not have the expertise or capability to do so at this time. In addition, we note that the Commission's recommendation is vague; detailed direction would be needed from the Commission on how to accomplish the recommended effort. This would need to include agreement on the analytical approach in order to meet expectations and to ensure acceptance of results. The Commission's recommendation does not acknowledge the time it would take to perform the analysis or the level of effort and cost that would be involved, e.g., experts needed to obtain and review data, performing detailed comparative analysis, preparation of a report. Based on these concerns, NMFS believes that the recommendation is not practicable.

Also, implementation of this recommendation would not provide any additional conservation value (e.g., improvement in mitigation effectiveness) for the proposed survey. The analysis would be retrospective and could be used to help inform analysis of future surveys in the same area. NSF is considering funding a survey of the Queen Charlotte Fault, north of the planned survey area for this action, but the survey would be completed before the acoustic data from this survey suggested by the Commission could be analyzed. NMFS is not aware of any other NSF-proposed seismic surveys on the R/V *Langseth* for this region in the foreseeable future that could incorporate the in situ data, if analyzed.

Comment 22: The ENGOs suggested NMFS should prohibit the use of the Kongsberg Simrad 122 MBES in shallow water because the system's lower frequencies were designed for use in deeper water.

Response: The ENGOs provide no justification for prohibiting the use of the MBES in shallow water aside from describing its characteristics. As discussed in previous comment responses, NMFS has determined the MBES is not likely to result in take of marine mammals and has no reason to believe that the use of the Kongsberg Simrad 122 in shallow water is cause for concern. The ENGOs do not provide any substantive argument to the contrary.

Comment 23: The ENGOs suggested NMFS should require L-DEO to immediately cease survey activities if any authorized take limits are exceeded or if a take of an unauthorized species occurs (e.g., take of a North Pacific right whale).

Response: NMFS agrees with the ENGOs that L-DEO must shut down the airgun array 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. This requirement was included in the notice of proposed IHA but was inadvertently omitted from the draft IHA. The final authorization includes this requirement.

Comment 24: The ENGOs suggested NMFS should require L-DEO to immediately cease survey activities if a take of an unauthorized level or intensity occurs, (e.g., serious injury or mortality of any species or take of a Southern Resident killer whale by Level A harassment). The ENGOs further suggest that if take is found to have been exceeded, then there should be an investigation and additional mitigation to avoid any additional take before activities can resume. Similarly, the Commission recommended NMFS include in all draft and final authorizations an explicit requirement to cease activities if a marine mammal is injured or killed during the specified activities, including by vessel strike, until NMFS reviews the circumstances involving any injury or death that is likely attributable to the activities and determines what additional measures are necessary to minimize additional injuries or death.

Response: NMFS does not expect that the proposed activities have the potential to result in injury or mortality to marine mammals and therefore does not agree that a blanket requirement for project activities to cease would be warranted. NMFS does not agree that a requirement for a vessel that is operating on the open water to suddenly stop operating is practicable, and it is unclear what mitigation benefit would result from such a requirement in relation to vessel strike. The Commission does not suggest what measures other than those prescribed in this IHA would potentially prove more effective in reducing the risk of strike. Therefore, we have not included this requirement in the authorization. NMFS retains authority to modify the IHA and cease all activities immediately based on a vessel strike and will exercise that authority if warranted.

With respect to the Commission's recommendation that NMFS include

these requirements in all proposed and final IHAs, NMFS determines the requirements for mitigation measures in each authorization based on numerous case-specific factors, including the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. As NMFS must make these determinations on a case by case basis, we therefore do not agree with this recommendation.

Comment 25: The ENGOs suggested NMFS impose a ship speed limit of 10 knots or less at all times to reduce noise and prevent ship strikes, with an exception for rare emergency or safety necessities. While the vessel conducting the survey is likely to be traveling well under 10 knots, NMFS should make this a requirement of any crew-transfer vessels used in the project.

Response: NMFS has analyzed the potential for ship strike resulting from L-DEO's planned activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-dolphinoid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 100 m or greater from all large whales, and 500 m or greater from any sighted North Pacific right whale (if a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action); a requirement that if protected species are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (e.g., attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area); and a requirement that 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. Finally, we note that all crew will be aboard the R/V *Langseth* through the entire survey, and there will not be any crew transfer vessels. We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse

impact on species or stocks and their habitat and therefore we do not include the 10 knot ship speed limit recommended by the ENGOs.

Comment 26: The ENGOs recommended NMFS require L-DEO to minimize the use of lines and cables and ensure that they are not flexible to reduce entanglement risk.

Response: As discussed in the notice of proposed IHA, no incidents of entanglement of marine mammals with seismic survey gear have been documented in over 54,000 nautical miles (nmi; 100,000 km) of previous NSF-funded seismic surveys when observers were aboard (e.g., Holst and Smultea 2008; RPS 2019; RPS 2021). 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. Entanglement in OBSs and OBNs is also not expected to occur. 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 therefore although we encourage L-DEO to use lines and cables that minimize entanglement risk, NMFS has not included the recommended requirement as a condition in the final authorization.

Comment 27: The ENGOs state that marine mammal strandings are most likely to result when a sound source is moving directly toward the shore. Therefore, the ENGOs suggested NMFS should require reconfigured tracklines to avoid these approaches when the airguns are firing.

Response: There is no conclusive evidence that exposure to airgun noise results in behaviorally-mediated forms of injury (i.e., mass stranding events). Behaviorally-mediated injury has been primarily associated with beaked whales exposed to mid-frequency active (MFA) naval sonar. As described in the notice of proposed IHA, tactical sonar is very different from the noise produced by airguns. One should therefore not expect the same reaction to airgun noise as to these other sources. The ENGOs reference a survey conducted by L-DEO in 2002 that was contemporaneous with and reasonably associated spatially with the stranding of two Cuvier's beaked whales. However, the event was not 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. Although NMFS does not expect that stranding is a potential outcome of this survey activity, we also note that certain tracklines closest to shore (*i.e.*, in waters less than 100 m deep in areas with highest estimated Southern Resident killer whale occurrence) have been eliminated, further reducing the risk of this outcome. 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. Therefore, we have not adopted the ENGOs recommendation to reconfigure the survey tracklines.

Comment 28: Both the ENGOs and Commission object to NMFS' potential consideration of a renewal IHA for this action, and in general. The ENGOs assert that IHA renewals are not permissible under the MMPA and instead recommend that applicants request a multi-year permit and accordingly reevaluate the effects of the action based on multiple years of take. The Commission recommended NMFS refrain from issuing IHA renewals for any authorization and instead use an abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS' intent to maximize efficiencies. If NMFS continues to propose to issue IHA renewals, the Commission recommends that NMFS (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS' IHA renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a renewal IHA, are valid for a period of not more than one year. In addition, the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA renewals. As noted above, the *Request for Public Comments* section of the notice of proposed IHA made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a renewal for this project. Because any renewal (as explained in the *Request for Public*

Comments section of the notice of proposed IHA) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of Proposed Activity section) or the same activities that were not completed within the 1 year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1 year renewal, should the IHA holder choose to request one in the coming months.

While there will be additional documents submitted with a renewal request, for a qualifying renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request will also contain a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment

on all proposed initial IHAs and renewals respectively, NMFS has ensured that the public "is invited and encouraged to participate fully in the agency decision-making process."

NMFS does not agree with the Commission and therefore does not adopt the Commission's recommendation that NMFS use an abbreviated **Federal Register** notice instead of IHA renewal. NMFS has previously provided responses to this specific recommendation in multiple notices, including 84 FR 52464 (October 2, 2019). NMFS does agree with the Commission's recommendation that NMFS specify that IHA renewals are a one-time opportunity in all **Federal Register** notices requesting comments on the possibility of an IHA renewal, in all associated proposed and final IHAs, and on our website. NMFS has specified this in the final IHA for L-DEO's activities and has been including this in **Federal Register** notices and proposed and final authorizations since last year.

Comment 29: The ENGOs recommended NMFS and L-DEO explore whether the proposed research could be conducted using alternative technologies or approaches that are less harmful to marine mammals. More broadly, and beyond the scope of this action, the ENGOs recommended NMFS engage with NSF to invest in research that explores alternative technologies.

Response: NMFS agrees with the ENGOs that development and use of technologies that reduce the environmental impact of geophysical surveys is a laudable objective and may be warranted in some cases. Alternative technologies are in various stages of development, and none of the systems with the potential to replace airguns as a seismic source are currently commercially available for use on a scale of activity such as that considered herein. Although some alternative technologies are available now, or will be in the next several years, for select uses, none are at a stage where they can replace airgun arrays outright. However, some may be used in select environments when commercially available. Such technologies may be evaluated in the future as they become commercially available and on a scale commensurate to the need. In summary, while we agree that alternative technologies may be beneficial, the ENGOs do not suggest any specific technologies or approaches and the suggestion that NMFS engage with NSF to research these methods is outside the authority provided to NMFS by the MMPA. However, NMFS would consider participating in related efforts

by the ENGOs or other entities interested in these technologies.

Comment 30: The ENGOs and the Commission recommended NMFS require L-DEO to use the method proposed by the Commission to estimate take and apply relevant corrections for airgun activity in daylight vs nighttime (including dawn and dusk) to better estimate the numbers of marine mammals taken by Level A and B harassment. The Commission further recommends that NMFS require L-DEO to specify in the final monitoring report (1) the number of days on which the airgun array was active and (2) the percentage of time and total time the array was active during daylight vs nighttime hours (including dawn and dusk).

Response: NMFS appreciates the Commission's development of a recommended approach to better estimate the numbers of marine mammals that may have been taken during geophysical survey activities, including marine mammals that were not detected. The "Commission's method" (see the Commission's letter for additional discussion and citation to a full description provided in an addendum to a May 1, 2019 Commission comment letter) involves correction of marine mammal sightings data through use of proxies for marine mammal detectability ($f(0)$) and platform/observer bias on marine mammal detection ($g(0)$), and extrapolation of corrected marine mammal sightings data based on the assumed extent of the Level B harassment zones.

However, NMFS does not concur with the recommendation to require L-DEO to implement this approach because we do not have confidence in the reliability of estimates of potential marine mammal take that would result from use of the approach. The Commission does not address the multiple assumptions that must be made in order to have confidence in the estimates that would be produced through application of the method. For example, the assumption that the application of proxy values for $g(0)$ and $f(0)$ is appropriate is not justified (including application of $f(0)$ values to species for which no value is available and assuming that application of $f(0)$ to species in a wholly different region is appropriate). Notably, $g(0)$ values are typically derived on a platform-specific basis, and even for specific observers—not generalized across platforms, as the Commission's method would require.

Separately, the appropriate application of distance sampling methods requires that certain

assumptions are valid, and the Commission does not explain why these assumptions should be assumed to be valid during a seismic survey, as compared with typical line-transect surveys operating without an active acoustic source. For example, a key underlying concept of distance sampling methodology is that the probability of detecting an animal decreases as its distance from the observer increases. This cannot be assumed true during an active seismic survey. NMFS believes it unlikely that the numerous assumptions inherent to application of the Commission's method would be accepted in a research context (where distance sampling approaches are typically applied).

Furthermore, the area over which observations are to be extrapolated through the Commission's method is a modeled ensonified area. We do not believe it appropriate to assume a modeled ensonified area is always accurate for purposes of estimating total take. In purporting to estimate total takes, the method ignores the fact that marine mammals exposed to a level of received sound assumed to cause take for analytical purposes may not in fact respond behaviorally in a way that equates to take, especially at great distance from the source.

NMFS believes it is important to focus on collection and reporting of empirical data that can directly inform an assessment of the effects of a specified activity on the affected species or stock. While there may be value in an assessment of potential unobserved take, we need to proceed cautiously in the development of derived values given our low confidence in multiple inputs. NMFS is currently more broadly evaluating monitoring requirements, including data collection, interpretation, and reporting, as well as the specific issue the Commission has raised, and is committed to developing improved approaches.

NMFS does concur with the Commission's recommendation that NMFS require L-DEO to specify in the final monitoring report (1) the number of days on which the airgun array was active and (2) the percentage of time and total time the array was active during daylight vs nighttime hours (including dawn and dusk). This requirement has been added to the final authorization.

Comment 31: The Commission asserts that L-DEO and other NSF-affiliated entities have not complied with all of the requirements set forth in certain final IHAs, and recommends that, should the alleged shortcomings occur again, NMFS refrain from issuing any further authorizations to L-DEO and

other NSF-affiliated entities until such time that the monitoring reports include all of the required information.

Response: NMFS appreciates the Commission's concern and will consider any future requests for incidental take authorization from NSF-affiliated entities according to the requirements of the MMPA.

Comment 32: Noting its disagreement with L-DEO's approach to estimating the size of various ensonified areas, the Commission recommends that NMFS require L-DEO to either (1) re-estimate the proposed Level A and B harassment zones and associated takes of marine mammals using (a) both operational and site-specific environmental parameters, (b) what the Commission believes to be a comprehensive source model and (c) what the Commission believes to be an appropriate sound propagation model for the proposed IHA or (2) collect or provide the relevant acoustic data to substantiate that its modeling approach is conservative for both deep- and intermediate-water depths beyond the Gulf of Mexico. In addition, the Commission recommends that NMFS (1) explain why sound channels with downward refraction, as well as seafloor reflections, are not likely to occur during the geophysical survey, (2) specify the degree to which both of those parameters would affect the estimation (or underestimation) of Level B harassment zones in deep- and intermediate- water depths, (3) explain why L-DEO's model and other modeling approaches provide more accurate, realistic, and appropriate Level A and B harassment zones than BELLHOP (a different propagation model favored by the Commission), particularly for deep- and intermediate-water depths, and (4) explain why, if L-DEO's model and other modeling approaches are considered best available science, other action proponents that conduct seismic surveys are not implementing similar methods, particularly given their simplicity.

Response: As noted by the Commission, these comments reflect a longstanding disagreement between NMFS and the Commission regarding L-DEO's approach to modeling the output of their airgun array and its propagation through the water column. NMFS has previously responded to similar Commission comments on L-DEO's modeling approach. We refer the reader to previous **Federal Register** notices providing responses rather than repeat them here (e.g., 84 FR 60059, November 07, 2019; 84 FR 54849, October 11, 2019; 84 FR 35073, July 22, 2019). Regardless of the addition of

slightly different points or modifications to the language with which the Commission expresses these points, the gist of the Commission's disagreement with L-DEO's modeling approach remains the same. NMFS believes that its prior responses have adequately explained the rationale for not following the Commission's recommendations and, importantly, why L-DEO's modeling approach is adequate.

Comment 33: The ENGOs asserted that NMFS must prepare an Environmental Impact Statement and cannot rely on the NSF's Environmental Assessment (EA) because they believe that there are significant environmental impacts. The CBD's comments on the NSF's draft EA were incorporated by reference in the ENGOs' comment letter on the proposed IHA. CBD's comments on NSF's draft EA primarily concerned Southern Resident killer whales, similar to the concerns addressed above.

Response: The NSF's draft EA, which NMFS adopted, was revised in consideration of CBD's comments (and those of other public commenters) and adequately analyzes the effects of the action. The commenters do not provide any information to support their claim of significant environmental impacts under NEPA. NMFS has reviewed the NSF's final EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI).

Comment 34: The ENGOs expressed doubt that the proposed activities were permissible under the ESA because they would jeopardize the continued existence of Southern Resident killer whales, North Pacific right whales, humpback whales, and blue whales, among other protected species and adversely modify proposed critical habitat. The proposed action clearly affects listed species as well as proposed and designated critical habitat, and therefore both NMFS and the NSF must undergo consultation under the ESA. The ENGOs urged NMFS to fulfill our commitment to complete consultation before authorizing any take of marine mammals, and requested a public comment period on the products of the consultation. The ENGOs strongly believe that NMFS cannot authorize the specified activities because they will jeopardize the recovery and survival of Southern Resident killer whales and North Pacific right whales.

Response: NMFS has completed consultation under the ESA on our proposal to authorize take of listed marine mammals incidental to L-DEO's survey activities. The NMFS Office of Protected Resources, Interagency Cooperation Division issued a Biological

Opinion concluding that the proposed action is not likely to jeopardize the continued existence of ESA-listed blue whales, fin whales, sei whales, sperm whales, Central America DPS humpback whales, Mexico DPS humpback whales, Southern Resident killer whale DPS, and Guadalupe fur seals and is not likely to destroy or adversely modify Steller sea lion or humpback whale critical habitat. There is no designated critical habitat in the action area for the other listed species. The Interagency Cooperation Division determined that a public comment period on the Biological Opinion was not warranted. The final Biological Opinion is available on our website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>.

Comment 35: The ENGOs asserted that NMFS cannot approve the proposed activity without first consulting with the states of Washington and Oregon under the Coastal Zone Management Act (CZMA). The CZMA authorizes states with federally approved coastal management programs to review applications for Federal licenses or permits to conduct activities in, or outside of, the coastal zone that affects land uses, water uses, or natural resources within the coastal zone to ensure the activity is fully consistent with the state's management plan.

Response: The NSF submitted consistency determinations to Washington and Oregon. Both the Washington State Department of Ecology and Oregon Coastal Management Program, the respective CZMA authorities for Washington and Oregon, concurred with the NSF's determinations. NMFS' action of authorizing take of marine mammal is incidental to the NSF's action of conducting the survey, therefore NMFS is not required to independently submit consistency determinations under CZMA.

Comment 36: The ENGOs and Deep Green Wilderness expressed concern that the proposed survey overlaps with Olympic Coast National Marine Sanctuary (OCNMS). The ENGOs reference the National Marine Sanctuaries Act (NMSA), which aims to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes. To achieve these purposes, the NMSA requires that Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases,

or permits that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary. The ENGOs noted that the action agency must follow the recommendations of the Secretary to avoid injury to any sanctuary resource or otherwise act to prevent and mitigate damage to such resources.

Response: NMFS satisfied our responsibilities under section 304(d) of the NMSA. NMFS and the NSF drafted a joint Sanctuary Resource Statement (SRS) to consult with the NOAA Office of National Marine Sanctuaries (ONMS) under the NMSA. ONMS provided two recommended alternatives to minimize injury and to protect sanctuary resources: (1) Limit operations in OCNMS to daylight hours only regardless of depth; and (2) use of the secondary support vessel aiding in marine mammal observations throughout the entire sanctuary. NMFS has included these recommendations in the final IHA.

Changes From the Proposed IHA to Final IHA

There are numerous changes from the proposed IHA, starting with the timing of the survey. The survey was initially proposed to occur in summer 2020 but was delayed until summer 2021. Since conclusion of the public comment period in May 2020, NMFS has reviewed newly available information, including recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and incorporated this information into our analysis of impacts on marine mammals and their habitat.

In addition to the timing changes, the survey tracklines have been modified to avoid surveying in the areas with the highest expected occurrence of Southern Resident killer whales. Between Tillamook Head, Oregon and Barkley Sound, British Columbia, L-DEO's planned tracklines have been truncated or removed entirely such that the ensonified area does not extend within the 100-meter (m) depth contour (see Estimated Take section for description of the Level B harassment zones and ensonified area). In addition to removing tracklines in nearshore shallow waters along the coast, L-DEO also modified tracklines such that the ensonified area will not extend within Canadian designated Southern Resident and Northern Resident killer whale critical habitat. Additionally, under consultation with Canada DFO, L-DEO removed all tracklines in waters 100 m or less in Canadian waters. Thus north of Tillamook Head, Oregon, no surveys

will occur in waters 100 m or less (see Figure 1). Based on informal recommendations from the Commission, NMFS recalculated the densities of Steller sea lions by applying the appropriate pup and non-pup growth rates of the population in Washington and British Columbia. Takes of all species and stocks have been recalculated using the revised tracklines and resulting ensouffled areas. Additionally, NMFS has revised the mitigation requirements regarding use of a second support vessel and daylight-only operations in waters 200 m or less. The proposed IHA required the use of the support vessel and limited operations to daylight only along the entire survey area in waters 200 m or less. In consideration of operational practicability, we have revised that requirement to apply only between Tillamook Head, Oregon and Barkley Sound, British Columbia. Based on consultation with the Olympic Coast National Marine Sanctuary (OCNMS), the final IHA requires L-DEO to use the support vessel and operate only during daylight hours within the OCNMS, regardless of water depth. OCNMS has also been added to the list of entities L-DEO must contact each day to obtain sightings reports of Southern Resident killer whales in the survey area and, in turn, report their own sightings of killer whales to the Sanctuary. Finally, as

recommended by the Commission, we have clarified the required elements that must be included in L-DEO's monitoring report.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species with expected potential for occurrence in the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing

that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's 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's U.S. Pacific and Alaska SARs. All MMPA stock information presented in Table 1 is the most recent available at the time of publication and is available in the 2019 SARs (Caretta *et al.*, 2020; Muto *et al.*, 2020) and draft 2020 SARs (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>). Where available, abundance and status information is also presented for marine mammals in Canadian waters in British Columbia.

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA

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 Eschrichtiidae: Gray whale	<i>Eschrichtius robustus</i>	Eastern North Pacific	-/-; N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenopteridae (rorquals): Humpback whale	<i>Megaptera novaeangliae</i>	California/Oregon/Wash- ington.	-/-; Y	2,900 (0.05, 2,784, 2014)	16.7	>42.1
Minke whale	<i>Balaenoptera acutorostrata</i>	Central North Pacific	-/-; Y	10,103 (0.30, 7,891, 2006) ..	83	26
Sei whale	<i>Balaenoptera borealis</i>	California/Oregon/Wash- ington.	-/-; N	636 (0.72, 369, 2014)	3.5	>1.3
Fin whale	<i>Balaenoptera physalus</i>	Eastern North Pacific	E/D; Y	519 (0.4, 374, 2014)	0.75	>0.2
		California/Oregon/Wash- ington.	E/D; Y	9,029 (0.12, 8,127, 2014)	81	>43.7
Blue whale	<i>Balaenoptera musculus</i>	Northeast Pacific	E/D; Y	3,168 (0.26, 2,554, 2013)	5.1	0.6
		Eastern North Pacific	E/D; Y	1,496 (0.44, 1,050, 2014)	1.2	>19.4
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae: Sperm whale	<i>Physeter macrocephalus</i>	California/Oregon/Wash- ington.	E/D; Y	1,997 (0.57, 1,270, 2014)	2.5	0.4
Family Kogiidae: Pygmy sperm whale	<i>Kogia breviceps</i>	California/Oregon/Wash- ington.	-/-; N	4,111 (1.12, 1,924, 2014)	19	0
Dwarf sperm whale	<i>Kogia sima</i>	California/Oregon/Wash- ington.	-/-; N	Unknown (Unknown, Un- known, 2014).	Undetermined	0
Family Ziphiidae (beaked whales): Cuvier's beaked whale ...	<i>Ziphius cavirostris</i>	California/Oregon/Wash- ington.	-/-; N	3,274 (0.67, 2,059, 2014)	21	<0.1

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Baird's beaked whale	<i>Berardius bairdii</i>	California/Oregon/Wash- ington.	-/-; N	2,697 (0.6, 1,633, 2014)	16	0
Mesoplodont beaked whales.	<i>Mesoplodon spp.</i>	California/Oregon/Wash- ington.	-/-; N	3,044 (0.54, 1,967, 2014)	20	0.1
Family Delphinidae:						
Bottlenose dolphin	<i>Tursiops truncatus</i>	California/Oregon/Wash- ington offshore.	-/-; N	1,924 (0.54, 1,255, 2014)	11	>1.6
Striped dolphin	<i>Stenella coeruleoalba</i>	California/Oregon/Wash- ington.	-/-; N	29,211 (0.2, 24,782, 2014) ..	238	>0.8
Common dolphin	<i>Delphinus delphis</i>	California/Oregon/Wash- ington.	-/-; N	969,861 (0.17, 839,325, 2014).	8,393	>40
Pacific white-sided dol- phin.	<i>Lagenorhynchus obliquidens</i>	California/Oregon/Wash- ington.	-/-; N	26,814 (0.28, 21,195, 2014)	191	7.5
		British Columbia ⁴	N/A	22,160 (unknown, 16,522, 2008).	Unknown	Unknown
Northern right whale dol- phin.	<i>Lissodelphis borealis</i>	California/Oregon/Wash- ington.	-/-; N	26,556 (0.44, 18,608, 2014)	179	3.8
Risso's dolphin	<i>Grampus griseus</i>	California/Oregon/Wash- ington.	-/-; N	6,336 (0.32, 4,817, 2014)	46	>3.7
False killer whale	<i>Pseudorca crassidens</i>	N/A	N/A	N/A	N/A	N/A
Killer whale	<i>Orcinus orca</i>	Offshore	-/-; N	300 (0.1, 276, 2012)	2.8	0
		Southern Resident	E/D; Y	73 (N/A, 73, 2019)	0.13	>0.4
		Northern Resident	-/-; N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-/-; N	349 (N/A, 349, 2018)	3.5	0.4
Short-finned pilot whale	<i>Globicephala macrorhynchus</i> .	California/Oregon/Wash- ington.	-/-; N	836 (0.79, 466, 2014)	4.5	1.2
Family Phocoenidae (por- poises):						
Harbor porpoise	<i>Phocoena phocoena</i>	Northern Oregon/Wash- ington Coast.	-/-; N	21,487 (0.44, 15,123, 2011)	151	>3.0
		Northern California/Southern Oregon.	-/-; N	35,769 (0.52, 23,749, 2011)	475	>0.6
		British Columbia ⁴	N/A	8,091 (unknown, 4,885, 2008).	Unknown	Unknown
Dall's porpoise	<i>Phocoenoides dalli</i>	California/Oregon/Wash- ington.	-/-; N	25,750 (0.45, 17,954, 2014)	172	0.3
		British Columbia ⁴	N/A	5,303 (unknown, 4,638, 2008).	Unknown	Unknown
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern fur seal	<i>Callorhinus ursinus</i>	Eastern Pacific	-/D; Y	608,143 (0.2, 514,738, 2018).	11,067	387
		California	-/D; N	14,050 (N/A, 7,524, 2013) ...	451	1.8
California sea lion	<i>Zalophus californianus</i>	U.S.	-/-; N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	-/-; N	43,201 (see SAR, 43,201, 2017).	2,592	113
		British Columbia ⁴	N/A	4,037 (unknown, 1,100, 2008).	Unknown	Unknown
Guadalupe fur seal	<i>Arctocephalus philippii townsendi</i> .	Mexico to California	T/D; Y	34,187 (N/A, 31,019, 2013)	1,062	>3.8
Family Phocidae (earless seals):						
Harbor seal	<i>Phoca vitulina</i>	Oregon/Washington Coastal	-/-; N	Unknown (Unknown, Un- known, 1999).	Undetermined	10.6
		British Columbia ⁴	N/A	24,916 (Unknown, 19,666, 2008).	Unknown	Unknown
Northern elephant seal ...	<i>Mirounga angustirostris</i>	California Breeding	-/-; N	179,000 (N/A, 81,368, 2010)	4,882	8.8

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: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3—These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

4—Best *et al.* (2015) total abundance estimates for animals in British Columbia based on surveys of the Strait of Georgia, Johnstone Strait, Queen Charlotte Sound, Hecate Strait, and Dixon Entrance. These rows represent British Columbia abundance estimates, where available, but do not represent additional stocks.

5—The California/Oregon/Washington stock of Mesoplodont beaked whales includes six species of beaked whales. Of the six species represented in this stock, only Blainville's beaked whales, Hubbs' beaked whales, and Stejneger's beaked whales are expected to be encountered or taken.

All species that could potentially occur in the planned survey areas are included in Table 1. However, additional species have been recorded in the specified geographic region but are considered sufficiently rare that take is not anticipated. The temporal and/or spatial occurrence of North Pacific right whales (*Eubalaena japonica*) is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Only 82 sightings of right whales in the entire eastern North Pacific were reported from 1962 to 1999, with the majority of these occurring in the Bering Sea and adjacent areas of the Aleutian Islands (Brownell *et al.*, 2001). Most sightings in the past 20 years have occurred in the southeastern Bering Sea, with a few in the Gulf of Alaska (Wade *et al.*, 2011). Despite many miles of systematic aerial and ship-based surveys for marine mammals off the coasts of Washington, Oregon and California over several years, only seven documented sightings of right whales were made from 1990 to 2000 (Waite *et al.*, 2003), and NMFS only aware of two documented sightings in the area since then. Because of the small population size and the fact that North Pacific right whales spend the summer feeding in high latitudes, the likelihood that the planned survey would encounter a North Pacific right whale is discountable.

In addition, the Northern sea otter (*Enhydra lutris kenyoni*) may be found in coastal waters of the survey area. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

A detailed description of the species likely to be affected by L-DEO's geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice of proposed IHA (85 FR 19580; April 7, 2020). Since that time, NMFS has published the draft 2020 SARs with updated abundance, PBR, and/or mortality information for the Eastern Pacific stock of northern fur seals, West Coast Transient stock of killer whales, Central North Pacific stock of humpback whales, Northeast Pacific and California/Oregon/Washington stocks of fin whale, Eastern North Pacific Southern Resident stock of killer whales, and Eastern North Pacific Stock and Pacific Coast Feeding Group of gray whales. The relevant information for these stocks has been updated in Table 1, however the status of these species and stocks has not changed; therefore detailed descriptions are not

provided here. Please refer to the **Federal Register** notice of proposed IHA for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Biologically Important Areas and Critical Habitat

Biologically Important Areas (BIAs) for feeding gray whales along the coasts of Washington, Oregon, and California have been identified, including northern Puget Sound, Northwestern Washington, and Grays Harbor in Washington, Depoe Bay and Cape Blanco and Orford Reef in Oregon, and Point St. George in California; most of these areas are of importance from late spring through early fall (Calambokidis *et al.*, 2015). BIAs have also been identified for migrating gray whales along the entire coasts of Washington, Oregon, and California; although most whales travel within 10 km from shore, the BIAs were extended out to 47 km from the coastline (Calambokidis *et al.*, 2015). The planned survey will occur during the late spring/summer feeding season, when most individuals from the eastern North Pacific stock occur farther north. Nonetheless, individual gray whales, particularly those from the PCFG could be encountered in nearshore waters of the project area.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*, 2015), NMFS delineated 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 1. Because MMPA stocks cannot be partitioned, *i.e.*, parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.*, selection of a recovery factor, stock status).

Within the survey area, three DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). On April 21, 2021, NMFS issued a final rule to designate critical habitat in nearshore waters of the North Pacific Ocean for the endangered Central America DPS and the threatened Mexico DPS of humpback whale (86 FR 21082). Critical habitat for the Central America DPS and

Mexico DPS was established within the California Current Ecosystem (CCE) off the coasts California, Oregon, and Washington, representing areas of key foraging habitat. Off Washington and northern Oregon, the critical habitat extends from the 50-m isobath out to the 1200-m isobath; off southern Oregon (south of 42°10' N), it extends out to the 2000-m isobath. L-DEO's easternmost planned tracklines occur within designated humpback whale critical habitat along the coast.

Critical habitat for humpbacks has been designated under Canadian law in four locations in British Columbia (DFO 2013), including in the waters of the survey area off southwestern Vancouver Island. The other three locations are located north of the survey area at Haida Gwaii (Langara Island and Southeast Moresby Island) and at Gil Island (DFO 2013). These areas show persistent aggregations of humpback whales and have features such as prey availability, suitable acoustic environment, water quality, and physical space that allow for feeding, foraging, socializing, and resting (DFO 2013). A small portion of L-DEO's planned tracklines overlap with Canadian designated humpback whale critical habitat off southwest Vancouver Island.

BIAs for feeding humpbacks along the coasts of Oregon and Washington, which have been described from May to November, are all within approximately 80 km from shore, and include the waters off northern Washington, and Stonewall and Heceta Bank, Oregon (Calambokidis *et al.*, 2015). Some segments of L-DEO's planned tracklines overlap with these BIAs.

The U.S. Southern Resident killer whale critical habitat designated under the ESA currently includes inland waters of Washington relative to a contiguous shoreline delimited by the line at a depth of 6.1 m relative to extreme high water (71 FR 69054; November 29, 2006). On September 19, 2019, NMFS published a proposed rule to revise designated Southern Resident killer whale critical habitat to include 40,472.7 km² of marine waters between the 6.1-m depth contour and the 200-m depth contour from the U.S. international border with Canada south to Point Sur, California (84 FR 49214; September 19, 2019). The planned survey tracklines overlap with NMFS' proposed expanded Southern Resident critical habitat.

In Canada, Southern Resident killer whales are listed as Endangered under the Species at Risk Act (SARA), and critical habitat has been designated in the trans-boundary waters in southern British Columbia, including the

southern Strait of Georgia, Haro Strait, and Strait of Juan de Fuca (SOR/2018–278, December 13, 2018; SOR/2009–68, February 19, 2009; DFO 2018). The continental shelf waters off southwestern Vancouver Island, including Swiftsure and La Pérouse Banks have also been designated as critical habitat for Southern Resident and Northern Resident killer whales (SOR/2018–278, December 13, 2018). As discussed above, L–DEO’s initial proposed survey tracklines that overlapped with Canadian designated critical habitat for killer whales have been eliminated.

Federally designated critical habitat for Steller sea lions in Oregon and California includes all rookeries (NMFS 1993). Although the Eastern DPS was delisted from the ESA in 2013, the designated critical habitat remains valid (NOAA 2019e). The critical habitat in Oregon is located along the coast at Rogue Reef (Pyramid Rock) and Orford Reef (Long Brown Rock and Seal Rock). The critical habitat area includes aquatic zones that extend 0.9 km seaward and air zones extending 0.9 km above these terrestrial and aquatic zones (NMFS 1993). L–DEO’s planned tracklines lie about 9 and 13 km away from the two Oregon units of Steller sea lion critical habitat.

Unusual Mortality Events

On May 30, 2019, NMFS declared an unusual mortality event (UME) for gray whales after elevated numbers of strandings occurred along the U.S. west coast. As of April 5, 2021, a total of 430 stranded gray whales have been reported, including 209 in the United States (93 in Alaska, 50 in Washington, 9 in Oregon, and 57 in California), 205 in Mexico, and 16 in Canada. Full or partial necropsy examinations were conducted on a subset of the whales. Preliminary findings in several of the whales have shown evidence of emaciation. These findings are not consistent across all of the whales examined, so more research is needed. The UME is ongoing, and NMFS continues to investigate the cause(s). Additional information about the UME is available at <https://www.fisheries.noaa.gov/national/marine-life-distress/>

2019-2020-gray-whale-unusual-mortality-event-along-west-coast.

Increased strandings of Guadalupe fur seals have occurred along the entire coast of California. Guadalupe fur seal strandings began in January 2015 and were eight times higher than the historical average. Strandings have continued since 2015 and have remained well above average through 2019. Strandings are seasonal and generally peak in April through June of each year. Strandings in Oregon and Washington became elevated starting in 2019 and have continued to present. Strandings in these two states in 2019 are five times higher than the historical average. Guadalupe fur seals have stranded alive and dead. Those stranding are mostly weaned pups and juveniles (1–2 years old). The majority of stranded animals showed signs of malnutrition with secondary bacterial and parasitic infections. NMFS has declared a UME for Guadalupe fur seals along the entire U.S. West Coast; the UME is ongoing and NMFS is continuing to investigate the cause(s). For additional information on the UME, see <https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2020-guadalupe-fur-seal-unusual-mortality-event-california>.

Elevated strandings of California sea lion pups occurred in Southern California between January 2013 and September 2016. As a result, NMFS declared a UME. The UME was confined to pup and yearling California sea lions, many of which were emaciated, dehydrated, and underweight for their age. A change in the availability of sea lion prey, especially sardines, a high value food source for nursing mothers, was a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012 and 2013, and while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicate that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing

mothers. Current evidence does not indicate that this UME was caused by a single infectious agent, though a variety of disease-causing bacteria and viruses were found in samples from sea lion pups. The investigative team examined multiple potential explanations for the high numbers of malnourished California sea lion pups observed on the island rookeries and stranded on the mainland in 2013. For more information, see <https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california>.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 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, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)—Continued

Hearing group	Generalized hearing range *
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. 31 marine mammal species (25 cetacean and six pinniped (four otariid and two phocid) species) have the reasonable potential to co-occur with the planned survey activities. Please refer to Table 1. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.*, all mysticete species), 15 are classified as mid-frequency cetaceans (*i.e.*, all delphinid and ziphiid species and the sperm whale), and four are classified as high-frequency cetaceans (*i.e.*, porpoises and *Kogia* spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from L-DEO's geophysical survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (85 FR 19580; April 7, 2020) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from L-DEO's geophysical survey activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (85 FR 19580; April 7, 2020). The referenced information includes a summary and discussion of the ways that the specified activity may impact marine mammals and their habitat. Consistent with the analysis in our prior Federal Register notices for similar L-DEO surveys and after independently evaluating the analysis in L-DEO's application, we determine that the survey is likely to result in the takes described in the Estimated Take section

of this document and that other forms of take are not expected to occur.

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 Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Active Acoustic Sound Sources

The notice of proposed IHA provided a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in the proposal inasmuch as the information was 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. Please see that document (85 FR 19580; April 7, 2020) for additional information. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

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 will primarily be by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high frequency cetaceans (*i.e.*, porpoises, *Kogia* spp.). The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS uses 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 for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed by varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience,

demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) root mean square (rms) for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent

(*e.g.*, scientific sonar) sources. L-DEO's planned activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of

exposure to noise from two different types of sources (impulsive or non-impulsive). L-DEO's planned seismic survey includes the use of impulsive (seismic airguns) sources.

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 <https://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 $1\mu\text{Pa}^2\text{s}$. 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 will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and acoustic propagation modeling.

L-DEO's modeling methodology is described in greater detail in the IHA application (LGL 2019). The planned 2D survey will acquire data using the 36-airgun array with a total discharge volume of 6,600 cubic inches (in^3) at a maximum tow depth of 12 m. L-DEO model results are used to determine the 160-dBrms radius for the 36-airgun array in deep water ($\leq 1,000$ m) down to a maximum water depth of 2,000 m. Water depths in the project area may be up to 4,400 m, but marine mammals are generally not anticipated to dive below 2,000 m (Costa and Williams 1999). Received sound levels were predicted by L-DEO's model (Diebold *et al.*, 2010) which 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 (approximately 1600 m), intermediate water depth on the slope (approximately 600–1100 m), and shallow water (approximately 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 Level A and Level B harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the sound pressure level (SPL) isopleths at their widest point from the sea surface down to the maximum relevant water depth for marine mammals of ~2,000 m. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data recorded at the deep and slope 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, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (Fig. 12 and 14 in Appendix H of NSF-USGS, 2011). 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. 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. For deep water (>1,000 m), L-DEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 m.

A recent retrospective analysis of acoustic propagation from use of the R/V *Langseth* sources during a 2012 survey off Washington (*i.e.*, in the same location) suggests that predicted (modeled) radii (using the same approach as that used here) were 2–3 times larger than the measured radii in shallow water. (Crone *et al.*, 2014). Therefore, because the modeled

shallow-water radii were specifically demonstrated to be overly conservative for the region in which the current survey is planned, L-DEO used the received levels from multichannel seismic data collected by the R/V *Langseth* during the 2012 survey to estimate Level B harassment radii in shallow (<100 m) and intermediate (100–1,000 m) depths (Crone *et al.*, 2014). Streamer data in shallow water collected in 2012 have the advantage of including the effects of local and complex subsurface geology, seafloor topography, and water column properties, and thus allow determination of radii more confidently than using data from calibration experiments in the Gulf of Mexico.

The survey will acquire data with a four-string 6,600-in³ airgun array at a tow depth of 12 m while the data collected in 2012 were acquired with the same airgun array at a tow depth of 9 m. To account for the differences in tow depth between the 2012 survey and the planned 2021 survey, L-DEO calculated a scaling factor using the deep water modeling (see Appendix D in L-DEO’s IHA application). A scaling factor of 1.15 was applied to the measured radii from the airgun array towed at 9 m.

The estimated distances to the Level B harassment isopleth for the R/V *Langseth*’s 36-airgun array are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Level B harassment zone (m) using L-DEO model
36 airgun array, 6,600-in ³	12	>1000 100–1000 <100	^a 6,733 ^b 9,468 ^b 12,650

^aDistance based on L-DEO model results.
^bDistance based on data from Crone *et al.* (2014).

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 source modeling 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 cumulative sound exposure level (SEL_{cum}) and peak sound pressure metrics (NMFS 2018). 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 values for SEL_{cum} and peak SPL for the R/V *Langseth* airgun array were derived from calculating the modified far-field signature (Table 5). 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 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, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (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 modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L-DEO used the acoustic modeling methodology as used for Level B harassment with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays, which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

For a more complete explanation of this modeling approach, please see “Appendix A: Determination of Mitigation Zones” in the IHA application.

TABLE 5—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE 6,600-IN³ AIRGUN ARRAY

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
6,600 in ³ airgun array (Peak SPL _{flat})	252.06	252.65	253.24	252.25	252.52
6,600 in ³ airgun array (SEL _{cum})	232.98	232.84	233.10	232.84	232.08

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the R/V *Langseth's* airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly

incorporated within the User Spreadsheet (*i.e.*, to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's "safe distance" methodology for mobile sources (described by Sivle *et al.*, 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities (4.2 knots) and shot intervals (37.5 m) specific to the planned survey, potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds.

Inputs to the User Spreadsheets in the form of estimated SLs are shown in

Table 5. User Spreadsheets used by L-DEO to estimate distances to Level A harassment isopleths for the 36-airgun array for the surveys are shown in Table A-3 in Appendix A of the IHA application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the survey are shown in Table 6. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.*, metric resulting in the largest isopleth).

TABLE 6—MODELED RADIAL DISTANCES (M) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Source (volume)	Threshold	Level A harassment zone (m)				
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
36-airgun array (6,600 in ³)	SEL _{cum}	426.9	0	1.3	13.9	0
	Peak	38.9	13.6	268.3	43.7	10.6

Note that because of some of the assumptions included in the methods used (*e.g.*, stationary receiver with no vertical or horizontal movement in response to the acoustic source), isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as this seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Auditory injury is unlikely to occur for mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds given very small modeled zones of injury for those species (up to 43.7 m), 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 for these three hearing groups 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 criteria 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. For full discussion of these concepts, please see our notice of proposed IHA (85 FR 19580; April 7, 2020).

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, otariid pinnipeds, and phocid pinnipeds 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, otariid pinniped, or phocid pinniped and have not authorized any Level A harassment for these species.

Marine Mammal Occurrence

In this section we provide the information about the presence, density,

and group dynamics of marine mammals that will inform the take calculations.

Extensive systematic aircraft- and ship-based surveys have been conducted for marine mammals in offshore waters of Oregon and Washington (e.g., Bonnell *et al.*, 1992; Green *et al.*, 1992, 1993; Barlow 1997, 2003; Barlow and Taylor 2001; Calambokidis and Barlow 2004; Barlow and Forney 2007; Forney 2007; Barlow 2010). Ship surveys for cetaceans in slope and offshore waters of Oregon and Washington were conducted by NMFS' Southwest Fisheries Science Center (SWFSC) in 1991, 1993, 1996, 2001, 2005, 2008, and 2014 and synthesized by Barlow (2016); these surveys were conducted from the coastline up to ~556 km from shore from June or August to November or December. These data were used by the SWFSC to develop spatial models of cetacean densities for the California Current Ecosystem (CCE). Systematic, offshore, at-sea survey data for pinnipeds are more limited (e.g., Bonnell *et al.*, 1992; Adams *et al.*, 2014). In British Columbia, several systematic surveys have been conducted in coastal waters (e.g., Williams and Thomas 2007; Ford *et al.*, 2010a; Best *et al.*, 2015; Harvey *et al.*, 2017). Surveys in coastal as well as offshore waters were conducted by DFO during 2002 to 2008; however, little effort occurred off the west coast of Vancouver Island during late spring/summer (Ford *et al.*, 2010). Density estimates for the survey areas outside the U.S. EEZ, *i.e.*, in the Canadian EEZ, were not readily available, so density estimates for U.S. waters were applied to the entire survey area.

The U.S. Navy primarily used SWFSC habitat-based cetacean density models to develop a marine species density database (MSDD) for the Northwest Training and Testing (NWT) Study Area for NWT Phase III activities (U.S. Navy 2019a), which encompasses the U.S. portion of the survey area. For several cetacean species, the Navy updated densities estimated by line-transect surveys or mark-recapture studies (e.g., Barlow 2016). These methods usually produce a single value for density that is an averaged estimate across very large geographical areas, such as waters within the U.S. EEZ off California, Oregon, and Washington (referred to as a "uniform" density estimate). This is the general approach applied in estimating cetacean abundance in the NMFS stock assessment reports. The disadvantage of these methods is that they do not provide spatially- or temporally-explicit density information. More recently, a

newer method called spatial habitat modeling has been used to estimate cetacean densities that address some of these shortcomings (e.g., Barlow *et al.*, 2009; Becker *et al.*, 2010; 2012a; 2014; Becker *et al.*, 2016; Ferguson *et al.*, 2006; Forney *et al.*, 2012; 2015; Redfern *et al.*, 2006). (Note that spatial habitat models are also referred to as "species distribution models" or "habitat-based density models.") These models estimate density as a continuous function of habitat variables (e.g., sea surface temperature, seafloor depth) and thus, within the study area that was modeled, densities can be predicted at all locations where these habitat variables can be measured or estimated. Spatial habitat models therefore allow estimates of cetacean densities on finer scales (spatially and temporally) than traditional line-transect or mark-recapture analyses.

The methods used to estimate pinniped at-sea densities are typically different than those used for cetaceans, because pinnipeds are not limited to the water and spend a significant amount of time on land (e.g., at rookeries). Pinniped abundance is generally estimated via shore counts of animals on land at known haulout sites or by counting number of pups weaned at rookeries and applying a correction factor to estimate the abundance of the population (for example Harvey *et al.*, 1990; Jeffries *et al.*, 2003; Lowry, 2002; Sepulveda *et al.*, 2009). Estimating in-water densities from land-based counts is difficult given the variability in foraging ranges, migration, and haulout behavior between species and within each species, and is driven by factors such as age class, sex class, breeding cycles, and seasonal variation. Data such as age class, sex class, and seasonal variation are often used in conjunction with abundance estimates from known haulout sites to assign an in-water abundance estimate for a given area. The total abundance divided by the area of the region provides a representative in-water density estimate for each species in a different location. In addition to using shore counts to estimate pinniped density, traditional line-transect derived estimates are also used, particularly in open ocean areas.

The Navy's MSDD is currently the most comprehensive compendium for density data available for the CCE. However, data products are currently not publically available for the database; thus, in this analysis the Navy's data products were used only for species for which density data were not available from an alternative spatially-explicit model (e.g., pinnipeds, *Kogia* spp., minke whales, sei whales, gray whales,

short-finned pilot whales, and Northern Resident, transient, and offshore killer whales). For these species, a geographic information system (GIS) was used to determine the areas expected to be ensonified in each density category (*i.e.*, distance from shore). For pinnipeds, the densities from the Navy's MSDD were corrected by projecting the most recent population growth and updated population estimates to 2020, when available. Where available, the appropriate seasonal density estimate from the MSDD was used in the estimation here (*i.e.*, summer).

NMFS obtained data products from the Navy for densities of Southern Resident killer whales in the NWT Offshore Study Area. The modeled density estimates were available on the scale of 1 km by 1 km grid cells. The densities from grid cells overlapping the ensonified area in each depth category were multiplied by the corresponding area to estimate potential exposures (Table 9).

For most other species, (*i.e.*, humpback, blue, fin, sperm, Baird's beaked, and other small beaked whales; bottlenose, striped, common, Pacific white-sided, Risso's and northern right whale dolphins; and Dall's porpoise), habitat-based density models from Becker *et al.* (2016) were used. Becker *et al.* (2016) used seven years of SWFSC cetacean line-transect survey data collected between 1991 and 2009 to develop predictive habitat-based models of cetacean densities in the CCE. The modeled density estimates were available on the scale of 7 km by 10 km grid cells. The densities from all grid cells overlapping the ensonified areas within each water depth category were averaged to calculate a zone-specific density for each species.

Becker *et al.* (2016) did not develop a density model for the harbor porpoise, so densities from Forney *et al.* (2014) were used for that species. Forney *et al.* (2014) presented estimates of harbor porpoise abundance and density along the Pacific coast of California, Oregon, and Washington based on aerial line-transect surveys conducted between 2007 and 2012. Separate density estimates were provided for harbor porpoises in Oregon south of 45° N and Oregon/Washington north of 45° N (*i.e.*, within the boundaries of the Northern California/Southern Oregon and Northern Oregon/Washington Coast stocks), so stock-specific take estimates were generated (Forney *et al.*, 2014).

Background information on the density calculations for each species/guild (if different from the general methods from the Navy's MSDD, Becker *et al.* (2016), or Forney *et al.* (2014)

described above) are reported here. Density estimates for each species/guild (aside from Southern Resident killer whales, which are discussed separately) are found in Table 7.

Gray Whale

DeAngelis *et al.* (2011) developed a migration model that provides monthly, spatially explicit predictions of gray whale abundance along the U.S. West Coast from December through June. These monthly density estimates apply to a “main migration corridor” that extends from the coast to 10 km offshore. A zone from the main migration corridor out to 47 km offshore is designated as an area of “potential presence”. To derive a density estimate for this area the Navy assumed that 1 percent of the population could be within the 47-km “potential presence” area during migration. Given the 2014 stock assessment population estimate of 20,990 animals (Carretta *et al.*, 2017b), approximately 210 gray whales may use this corridor. Assuming the migration wave lasts 30 days, then 7 whales on average on any one day could occur in the “potential presence” area. The area from the main migration route offshore to 47 km within the NWTT study area = 45,722.06 km², so density within this zone = 0.00015 whales/km². From July–November, gray whale occurrence off the coast is expected to consist primarily of whales belonging to the Pacific Coast Feeding Group (PCFG). Calambokidis *et al.* (2012) provided an updated analysis of the abundance of the PCFG whales in the Pacific Northwest and recognized that this group forms a distinct feeding aggregation. For the purposes of establishing density, the Navy assumed that from July 1 to November 30 all the 209 PCFG whales could be present off the coast in the Northern California/Oregon/Washington region (this accounts for the potential that some PCFG whales may be outside of the area but that there also may be some non-PCFG whales in the region as noted by Calambokidis *et al.* (2012)). Given that the PCFG whales are found largely nearshore, it was assumed that all the whales could be within 10 km of the coast. To capture the potential presence of whales further offshore (*e.g.*, Oleson *et al.*, 2009), it was assumed that a percentage of the whales could be present from 10 km out to 47 km off the coast; the 47 km outer limit is consistent with the DeAngelis *et al.* (2011) migration model. Since 77 percent of the PCFG sightings were within the nearshore BIAs (Calambokidis *et al.*, 2015), it was assumed that 23 percent (48 whales) could potentially be found

further offshore. Two strata were thus developed for the July–November gray whale density layers: (1) From the coast to 10 km offshore, and (2) from 10 km to 47 km offshore. The density was assumed to be 0 animals/km² for areas offshore of 47 km.

Small Beaked Whale Guild

NMFS has developed habitat-based density models for a small beaked whale guild in the CCE (Becker *et al.*, 2012b; Forney *et al.*, 2012). The small beaked whale guild includes Cuvier's beaked whale and beaked whales of the genus *Mesoplodon*, including Blainville's beaked whale, Hubbs' beaked whale, and Stejneger's beaked whale. NMFS SWFSC developed a CCE habitat-based density model for the small beaked whale guild which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2009 (Becker *et al.*, 2016).

False Killer Whale

False killer whales were not included in the Navy's MSDD, as they are very rarely encountered in the northeast Pacific. Density estimates for false killer whales were also not presented in Barlow (2016) or Becker *et al.* (2016), as no sightings occurred during surveys conducted between 1986 and 2008 (Ferguson and Barlow 2001, 2003; Forney 2007; Barlow 2003, 2010). One sighting was made off of southern California during 2014 (Barlow 2016). One pod of false killer whales occurred in Puget Sound for several months during the 1990s (Navy 2015). Based on the available information, NMFS does not believe false killer whales are expected to be taken, but L–DEO has requested take of this species so we are acting on that request.

Killer Whale

A combination of movement data (from both visual observations and satellite-linked tags) and detections from stationary acoustic recorders have provided information on the offshore distribution of the Southern Resident stock (Hanson *et al.*, 2018). These data have been used to develop state space movement models that provide estimates of the probability of occurrence (or relative density) of Southern Residents in the offshore study area in winter and spring (Hanson *et al.*, 2018). Since the total number of animals that comprise each pod is known, the relative density estimates were used in association with the total abundance estimates to derive absolute density estimates (*i.e.*, number of animals/km²) within the offshore study

area. Given that the K and L pods were together during all but one of the satellite tag deployments, Hanson *et al.* (2018) developed two separate state space models, one for the combined K and L pods and one for the J pod. The absolute density estimates were thus derived based on a total of 53 animals for the K and L pods (K pod = 18 animals, L pod = 35 animals) and 22 animals for the J pod (Center for Whale Research, 2019). Of the three pods, the K and L pods appear to have a more extensive and seasonally variable offshore coastal distribution, with rare sightings as far south as Monterey Bay, California (Carretta *et al.*, 2019; Ford *et al.*, 2000; Hanson *et al.*, 2018). Two seasonal density maps were thus developed for the K and L pods, one representing their distribution from January to May (the duration of the tag deployments), and another representing their distribution from June to December. Based on stationary acoustic recording data, their excursions offshore from June to December are more limited and typically do not extend south of the Columbia River (Emmons 2019). To provide more conservative density estimates, the Navy extended the June to December distribution to just south of the Columbia River and redistributed the total K and L populations (53 animals) within the more limited range boundaries. A conservative approach was also adopted for the J pod since the January to May density estimates were assumed to represent annual occurrence patterns, despite information that this pod typically spends more time in the inland waters during the summer and fall (Carretta *et al.*, 2019; Ford *et al.*, 2000; Hanson *et al.*, 2018). Further, for all seasons the Navy assumed that all members of the three pods of Southern Residents could occur either offshore or in the inland waters, so the total number of animals in the stock was used to derive density estimates for both study areas.

Due to the difficulties associated with reliably distinguishing the different stocks of killer whales from at sea sightings, and anticipated equal likelihood of occurrence among the stocks, density estimates for the rest of the stocks are presented as a whole (*i.e.*, includes the Offshore, West Coast Transient, and Northern Resident stocks). Barlow (2016) presents density values for killer whales in the CCE, with separate densities for waters off Oregon/Washington (*i.e.*, north of the California border) and Northern California for summer/fall. Density data are not available for the NWTT Offshore area northwest of the CCE study area, so data

from the SWFSC Oregon/Washington area were used as representative estimates. These values were used to represent density year-round.

Short-Finned Pilot Whale

Along the U.S. West Coast, short-finned pilot whales were once common south of Point Conception, California (Carretta *et al.*, 2017b; Reilly & Shane, 1986), but now sightings off the U.S. West Coast are infrequent and typically occur during warm water years (Carretta *et al.*, 2017b). Stranding records for this species from Oregon and Washington waters are considered to be beyond the normal range of this species rather than an extension of its range (Norman *et al.*, 2004). Density values for short-finned pilot whales are available for the SWFSC Oregon/Washington and Northern California strata for summer/fall (Barlow, 2016). Density data are not available for the NWT Offshore area northwest of the SWFSC strata, so data from the SWFSC Oregon/Washington stratum were used as representative estimates. These values were used to represent density year-round.

Guadalupe Fur Seal

Adult male Guadalupe fur seals are expected to be ashore at breeding areas over the summer, and are not expected to be present during the planned geophysical survey (Caretta *et al.*, 2017b; Norris 2017b). Additionally, breeding females are unlikely to be present within the Offshore Study Area as they remain ashore to nurse their pups through the fall and winter, making only short foraging trips from rookeries (Gallo-Reynoso *et al.*, 2008; Norris 2017b; Yochem *et al.*, 1987). To estimate the total abundance of Guadalupe fur seals, the Navy adjusted the population reported in the 2016 SAR (Caretta *et al.*, 2017b) of 20,000 seals by applying the average annual growth rate of 7.64 percent over the seven years between 2010 and 2017. The resulting 2017 projected abundance was 33,485 fur seals. Using the reported composition of the breeding population of Guadalupe fur seals (Gallo-Reynoso 1994) and satellite telemetry data (Norris 2017b), the Navy established seasonal and demographic abundances of Guadalupe fur seals expected to occur within the Offshore Study Area.

The distribution of Guadalupe fur seals in the Offshore Study Area was stratified by distance from shore (or water depth) to reflect their preferred pelagic habitat (Norris, 2017a). Ten percent of fur seals in the Study Area are expected to use waters over the continental shelf (approximated as waters with depths between 10 and 200

m). A depth of 10 m is used as the shoreward extent of the shelf (rather than extending to shore), because Guadalupe fur seals in the Offshore Study Area are not expected to haul out and would not be likely to come close to shore. All fur seals (*i.e.*, 100 percent) would use waters off the shelf (beyond the 200-m isobath) out to 300 km from shore, and 25 percent of fur seals would be expected to use waters between 300 and 700 km from shore (including the planned geophysical survey area). The second stratum (200 m to 300 km from shore) is the preferred habitat where Guadalupe fur seals are most likely to occur most of the time. Individuals may spend a portion of their time over the continental shelf or farther than 300 km from shore, necessitating a density estimate for those areas, but all Guadalupe fur seals would be expected to be in the central stratum most of the time, which is the reason 100 percent is used in the density estimate for the central stratum (Norris, 2017a). Spatial areas for the three strata were estimated in a GIS and used to calculate the densities.

The Navy's density estimate for Guadalupe fur seals projected the abundance through 2017, while L-DEO's survey was initially planned to occur in 2020. Therefore, we have projected the abundance estimate in 2020 using the abundance estimate (34,187 animals) and population growth rate (5.9 percent) presented in the 2019 draft SARs (Caretta *et al.*, 2019). This calculation yielded an increased density estimate of Guadalupe fur seals than what was presented in the Navy's MSDD.

Northern Fur Seal

The Navy estimated the abundance of northern fur seals from the Eastern Pacific stock and the California breeding stock that could occur in the NWT Offshore Study Area by determining the percentage of time tagged animals spent within the Study Area and applying that percentage to the population to calculate an abundance for adult females, juveniles, and pups independently on a monthly basis. Adult males are not expected to occur within the Offshore Study Area and the planned survey area during the planned geophysical survey as they spend the summer ashore at breeding areas in the Bering Sea and San Miguel Island (Caretta *et al.*, 2017b). Using the monthly abundances of fur seals within the Offshore Study Area, the Navy created strata to estimate the density of fur seals within three strata: 22 km to 70 km from shore, 70 km to 130 km from shore, and 130 km to 463 km from shore

(the western Study Area boundary). L-DEO's planned survey is 423 km from shore at the closest point. Based on satellite tag data and historic sealing records (Olesiuk 2012; Kajimura 1984), the Navy assumed 25 percent of the population present within the overall Offshore Study Area may be within the 130 km to 463 km stratum.

The Navy's density estimates for northern fur seals did not include the latest abundance data collected from Bogoslof Island or the Pribilof Islands in 2015 and 2016. Incorporating the latest pup counts yielded a slight decrease in the population abundance estimate, which resulted in a slight decrease in the estimated densities of northern fur seals in each depth stratum.

Steller Sea Lion

The Eastern stock of Steller sea lions has established rookeries and breeding sites along the coasts of California, Oregon, British Columbia, and southeast Alaska. A new rookery was recently discovered along the coast of Washington at the Carroll Island and Sea Lion Rock complex, where more than 100 pups were born in 2015 (Muto *et al.*, 2017; Wiles 2015). The 2017 SAR did not factor in pups born at sites along the Washington coast (Muto *et al.*, 2017). Considering that pups have been observed at multiple breeding sites since 2013, specifically at the Carroll Island and Sea Lion Rock complex (Wiles 2015), the 2017 SAR abundance of 1,407 Steller sea lions (non-pups only) for Washington underestimates the total population. Wiles (2015) estimates that up to 2,500 Steller sea lions are present along the Washington coast, which is the abundance estimate used by the Navy to calculate densities. Approximately 30,000 Steller sea lions occur along the coast of British Columbia, but these animals were not included in the Navy's calculations. The Navy applied the annual growth rate for each regional population (California, Oregon, Washington, and southeast Alaska), reported in Muto *et al.* (2017), to each population to estimate the stock abundance in 2017, and we further projected the population estimate in 2020. The Commission noted that we had used the non-pup population growth rate to project the population of both non-pups and pups. Additionally, the Commission suggested we include the British Columbia population in our projections. We have revised the population projections and resulting density estimates accordingly.

Sea lions from northern California and southern Oregon rookeries migrate north in September following the breeding season and winter in northern

Oregon, Washington, and British Columbia waters. They disperse widely following the breeding season, which extends from May through July, likely in search of different types of prey, which may be concentrated in areas where oceanic fronts and eddies persist (Fritz *et al.*, 2016; Jemison *et al.*, 2013; Lander *et al.*, 2010; Muto *et al.*, 2017; NMFS 2013; Raum-Suryan *et al.*, 2004; Sigler *et al.*, 2017). Adults depart rookeries in August. Females with pups remain within 500 km of their rookery during the non-breeding season and juveniles of both sexes and adult males disperse more widely but remain primarily over the continental shelf (Wiles 2015).

Based on 11 sightings along the Washington coast, Steller sea lions were observed at an average distance of 13 km from shore and 35 km from the shelf break (defined as the 200-m isobath) (Oleson *et al.*, 2009). The mean water depth in the area of occurrence was 42 m, and surveys were conducted out to approximately 60 km from shore. Wiles (2015) estimated that Steller sea lions off the Washington coast primarily occurred within 60 km of shore, favoring habitats over the continental shelf. However, a few individuals may travel several hundred km offshore (Merrick & Loughlin 1997; Wiles 2015). Based on these occurrence and distribution data, two strata were used to estimate densities for Steller sea lions. The spatial area extending from shore to the 200-m isobath (*i.e.*, over the continental shelf) was defined as one stratum, and the second stratum extended from the 200-m isobath to 300 km from shore to account for reports of Steller sea lions occurring several hundred km offshore. Ninety-five percent of the population of Steller sea lions occurring in the NWT Study Area were distributed over the continental shelf stratum and the remaining five percent were assumed to occur between the 200-m isobath and 300 km from shore.

The percentage of time Steller sea lions spend hauled out varies by season, life stage, and geographic location. To calculate densities in the Study Area, the projected population abundance was adjusted to account for time spent hauled out. In spring and winter, sea lions were estimated to be in the water 64 percent of the time. In summer, when sea lions are more likely to be in the water, the percent of animals estimated to be in the water was increased to 76 percent, and in fall, sea lions were anticipated to be in the water 53 percent of the time (U.S. Navy 2019). Densities were calculated for each depth stratum off Washington and off Oregon.

California Sea Lion

Seasonal at-sea abundance of California sea lions is estimated from strip transect survey data collected offshore along the California coastline (Lowry & Forney 2005). The survey area was divided into seven strata, labeled A through G. Abundance estimates from the two northernmost strata (A and B) were used to estimate the abundance of California sea lions occurring in the NWT Study Area. While the northernmost stratum (A) only partially overlaps with the Study Area, this approach conservatively assumes that all sea lions from the two strata would continue north into the Study Area.

The majority of male sea lions would be expected in the NWT Study Area from August to mid-June (Wright *et al.*, 2010). In summer, males are expected to be at breeding sites off of Southern California. In-water abundance estimates of adult and sub-adult males in strata A and B were extrapolated to estimate seasonal densities in the Study Area. Approximately 3,000 male California sea lions are known to pass through the NWT Study Area in August as they migrate northward to the Washington coast and inland waters (DeLong 2018a; Wright *et al.*, 2010). Nearly all male sea lions are expected to be on or near breeding sites off California in July (DeLong *et al.*, 2017; Wright *et al.*, 2010). An estimate of 3,000 male sea lions is used for the month of August. Projected 2017 seasonal abundance estimates were derived by applying an annual growth rate of 5.4 percent (Caretta *et al.*, 2017b) between 1999 and 2017 to the abundance estimates from Lowry & Forney (2005).

The strata used to calculate densities in the NWT Study Area were based on distribution data from Wright *et al.* (2010) and Lowry & Forney (2005) indicating that approximately 90 percent of California sea lions occurred within 40 km of shore and 100 percent of sea lions were within 70 km of shore. A third stratum was added that extends from shore to 450 km offshore to account for anomalous conditions, such as changes in sea surface temperature and upwelling associated with El Niño, during which California sea lions have been encountered farther from shore, presumably seeking prey (DeLong & Jeffries 2017; Weise *et al.*, 2010). The Navy calculated densities for each stratum (0 to 40 km, 40 to 70 km, and 0 to 450 km) for each season, spring, summer, fall, and winter, but noted that the density of California sea lions in all strata for June and July was 0 animals/km². The Navy's calculated densities for

August were conservatively used here, as sightings of California sea lions have been reported on the continental shelf in June and July (Adams *et al.*, 2014).

Northern Elephant Seal

The most recent surveys supporting the abundance estimate for northern elephant seals were conducted in 2010 (Caretta *et al.*, 2017b). By applying the average growth rate of 3.8 percent per year for the California breeding stock over the 7 years from 2010 to 2017, the Navy calculated a projected 2017 abundance estimate of 232,399 elephant seals (Caretta *et al.*, 2017b; Lowry *et al.*, 2014). Male and female distributions at sea differ both seasonally and spatially. Pup counts reported by Lowry *et al.*, (2014) and life tables compiled by Condit *et al.*, (2014) were used to determine the proportion of males and females in the population, which was estimated to be 56 percent female and 44 percent male. Females are assumed to be at sea 100 percent of the time within their seasonal distribution area in fall and summer (Robinson *et al.*, 2012). Males are at sea approximately 90 percent of the time in fall and spring, remain ashore through the entire winter, and spend one month ashore to molt in the summer (*i.e.*, are at sea 66 percent of the summer). Monthly distribution maps produced by Robinson *et al.* (2012) showing the extent of foraging areas used by satellite tagged female elephant seals were used to estimate the spatial areas to calculate densities. Although the distributions were based on tagged female seals, Le Boeuf *et al.* (2000) and Simmons *et al.* (2007) reported similar tracks by males over broad spatial scales. The spatial areas representing each monthly distribution were calculated using GIS and then averaged to produce seasonally variable areas and resulting densities.

As with other pinniped species above, NMFS used the population growth rate reported by Caretta *et al.* (2017b) to project the estimated abundance in 2020. The resulting population estimate and estimated densities increased from those presented in the Navy's MSDD (U.S. Navy 2019).

Harbor Seal

Only harbor seals from the Washington and Oregon Coast stock would be expected to occur in the survey area. The most recent abundance estimate for the Washington and Oregon Coast stock is 24,732 harbor seals (Caretta *et al.*, 2017b). Survey data supporting this abundance estimate are from 1999, which exceeds the 8 year limit beyond which NMFS will not confirm abundance in a SAR (Caretta *et*

al., 2017b). However, based on logistical growth curves for the Washington and Oregon Coast stock that leveled off in the early 1990s (Caretta *et al.*, 2017b) and unpublished data from the Washington Department of Fish and Wildlife (DeLong & Jeffries 2017), an annual growth rate of 0 percent (*i.e.*, the population has remained stable) was applied such that the 2017 abundance estimate used by the Navy, and 2020 estimate used here, was still 24,732 harbor seals. A haulout factor of 33 percent was used to account for hauled-

out seals (*i.e.*, seals are estimated to be in the water 33 percent of the time) (Huber *et al.*, 2001). A single stratum extending from shore to 30 km offshore was used to define the spatial area used by the Navy for calculating densities off Washington and Oregon (Bailey *et al.*, 2014; Oleson *et al.*, 2009).

No significant new information is available since we published the notice of proposed IHA, and no changes have been made, other than those described in the Changes from the Proposed IHA

section, provided previously in this document.

Marine Mammal Densities

Densities for most species are presented by depth stratum (shallow, intermediate, and deep water) in Table 7. For species where densities are available based on other categories (gray whale, harbor porpoise, northern fur seal, Guadalupe fur seal, California sea lion, Steller sea lion), category definitions are provided in the footnotes of Table 7.

TABLE 7—MARINE MAMMAL DENSITY VALUES IN THE SURVEY AREA

Species	Estimated density (#/km ²)			Reference
	Shallow <100 m/Category 1	Intermediate 100–1,000 m/Category 2	Deep >1,000 m/Category 3	
LF Cetaceans:				
Humpback whale	0.0052405	0.0040200	0.0004830	Becker <i>et al.</i> (2016)
Blue whale	0.0020235	0.0010518	0.0003576	Becker <i>et al.</i> (2016)
Fin whale	0.0002016	0.0009306	0.0013810	Becker <i>et al.</i> (2016)
Sei whale	0.0004000	0.0004000	0.0004000	U.S. Navy (2019)
Minke whale	0.0013000	0.0013000	0.0013000	U.S. Navy (2019)
Gray whale ^a	0.0155000	0.0010000	N.A.	U.S. Navy (2019)
MF Cetaceans:				
Sperm whale	0.0000586	0.0001560	0.0013023	Becker <i>et al.</i> (2016)
Baird's beaked whale	0.0001142	0.0002998	0.0014680	Becker <i>et al.</i> (2016)
Small beaked whale	0.0007878	0.0013562	0.0039516	Becker <i>et al.</i> (2016)
Bottlenose dolphin	0.0000007	0.0000011	0.0000108	Becker <i>et al.</i> (2016)
Striped dolphin	0.0000000	0.0000025	0.0001332	Becker <i>et al.</i> (2016)
Short-beaked common dolphin	0.0005075	0.0010287	0.0016437	Becker <i>et al.</i> (2016)
Pacific white-sided dolphin	0.0515230	0.0948355	0.0700595	Becker <i>et al.</i> (2016)
Northern right-whale dolphin	0.0101779	0.0435350	0.0621242	Becker <i>et al.</i> (2016)
Risso's dolphin	0.0306137	0.0308426	0.0158850	Becker <i>et al.</i> (2016)
False killer whale ^b	N.A.	N.A.	N.A.	
Killer whale (all stocks except Southern Residents).	0.0009200	0.0009200	0.0009200	U.S. Navy (2019)
Short-finned pilot whale	0.0002500	0.0002500	0.0002500	U.S. Navy (2019)
HF Cetaceans:				
Pygmy/dwarf sperm whale	0.0016300	0.0016300	0.0016300	U.S. Navy (2019)
Dall's porpoise	0.1450767	0.1610605	0.1131827	Becker <i>et al.</i> (2016)
Harbor porpoise ^c	0.6240000	0.4670000	N.A.	Forney <i>et al.</i> (2014)
Otariids:				
Northern fur seal ^d	0.0113247	0.1346441	0.0103424	U.S. Navy (2019)
Guadalupe fur seal ^e	0.0234772	0.0262595	N.A.	U.S. Navy (2019)
California sea lion ^f	0.0288000	0.0037000	0.0065000	U.S. Navy (2019)
Steller sea lion ^g	0.4804893	0.0035811	N.A.	U.S. Navy (2019)
Phocids:				
Northern elephant seal	0.0345997	0.0345997	0.0345997	U.S. Navy (2019)
Harbor seal ^h	0.3424000	N.A.	N.A.	U.S. Navy (2019)

^a Category 1 = 0–10 km offshore, Category 2 = 10–47 km offshore (U.S. Navy 2019).

^b No density estimates available for false killer whales in the survey area, take is based on mean group size from Mobley *et al.* (2000).

^c Category 1 = South of 45° N, Category 2 = North of 45° N (Forney *et al.*, 2014).

^d Category 1 = 22–70 km offshore, Category 2 = 70–130 km offshore, Category 3 = 130–463 km offshore (U.S. Navy 2019).

^e Category 1 = 10–200 m depth, Category 2 = 200 m depth–300 km offshore; No stock-specific densities are available so these densities were applied to northern fur seals as a species (U.S. Navy 2019).

^f Category 1 = 0–40 km offshore, Category 2 = 40–70 km offshore, Category 3 = 0–450 km offshore (U.S. Navy 2019).

^g Category 1 = shore–200 m depth, Category 2 = 200 m depth–300 m offshore (U.S. Navy 2019).

^h Category 1 = 0–30 km offshore (U.S. Navy 2019).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to

sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths 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 ensounded to sound levels that exceed the Level A and Level B harassment thresholds. The distance for the 160-dB threshold (based on L–DEO model results) was used to draw a buffer

around every transect line in GIS to determine the total ensonified area in each depth category (Table 8). The areas presented in Table 8 do not include areas ensonified within Canadian territorial waters (from 0–12 nmi (22.2 km) from shore). As discussed above, NMFS cannot authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS has still calculated the level of incidental take in the entire activity area (including Canadian territorial waters) as part of the analysis supporting our determination under the MMPA that the activity will have a negligible impact on the affected

species. The total estimated take in U.S. and Canadian waters is presented in Table 11.

In past applications, to account for unanticipated delays in operations, L-DEO has added 25 percent in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed. In this application, however, due to the strict operational timelines and availability of the R/V *Langseth*, no additional time or distance has been added to the survey calculations. 37 days is the absolute maximum amount of time the R/V *Langseth* is available to conduct seismic operations.

The ensonified areas in Table 8 were used to estimate take of marine mammal

species with densities available for the three depth strata (shallow, intermediate, and deep waters). For other species where densities are available based on other categories (*i.e.*, gray whale, harbor porpoise, northern fur seal, Guadalupe fur seal, California sea lion, Steller sea lion; see Table 7), GIS was used to determine the areas expected to be ensonified in each density category (see L-DEO's EA for the ensonified areas in each category). The areas provided in Tables 8 and 9 here have been updated from those provided in Tables 8 and 9 of the notice of proposed IHA (85 FR 19580; April 7, 2020) based on the revised planned survey tracklines.

TABLE 8—AREAS (KM²) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Survey zone	Criteria	Relevant isopleth (m)	Total ensonified area (km ²)
Level B Harassment:			
Shallow <100 m	160 dB	^a 12,650	3,580.73
Intermediate 100–1,000 m	160 dB	^b 9,468	23,562.43
Deep >1,000 m	160 dB	^b 6,733	52,438.71
Overall .....	.....	.....	79,581.85
Level A Harassment:			
All depth zones	LF Cetacean	426.9	5,334.55
	MF Cetacean	13.6	171.42
	HF Cetacean	268.3	3,363.99
	Otariid	10.6	133.61
	Phocid	43.7	550.53

^aBased on L-DEO model results

^bBased on data from Crone *et al.* (2014)

Density estimates for Southern Resident killer whales from the U.S. Navy's MSDD were overlaid with GIS

layers of the Level B harassment zones in each depth category to determine the

areas expected to be ensonified in each density category (Table 9).

TABLE 9—SOUTHERN RESIDENT KILLER WHALE DENSITIES AND CORRESPONDING ENSONIFIED AREAS

Pod	Density (animals/km ²)	Ensonified area (km ²)
K/L	0.000000	5,888
	0.000001–0.002803	15,470
	0.002804–0.005615	342
	0.005616–0.009366	0
	0.009367–0.015185	0
J	0.000000	6,427
	0.000001–0.001991	5,556
	0.001992–0.005010	0
	0.005011–0.009602	0
	0.009603–0.018822	20

The marine mammals predicted to occur within these respective areas, based on estimated densities or other occurrence records, are assumed to be incidentally taken. For species where NMFS expects take by Level A

harassment to potentially occur, the calculated Level A harassment takes have been subtracted from the total within the Level B harassment zone. Estimated exposures for the survey outside of Canadian territorial waters

are shown in Table 10. These numbers have changed from those provided in Table 10 of the notice of proposed IHA (85 FR 19580; April 7, 2020) because of the revised planned survey tracklines.

TABLE 10—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION

Species	MMPA stock ^a	Stock abundance	Estimated take		Total authorized take	Percent of MMPA stock
			Level 1B	Level 1A		
LF Cetaceans:						
	Central North Pacific	10,103	112	29	^b 141	1.40
Humpback whale	California/Oregon/Washington.	2,900	.....	.....	.....	4.86
Blue whale	Eastern North Pacific	1,647	40	11	51	3.10
Fin whale	California/Oregon/Washington.	9,029	94	1	95	1.05
	Northeast Pacific	3,168	.....	.....	.....	3.00
Sei whale	Eastern North Pacific	27,197	30	2	32	0.12
Minke whale	California/Oregon/Washington.	25,000	96	7	103	0.41
Gray whale	Eastern North Pacific	26,960	43	1	44	0.16
MF Cetaceans:						
Sperm whale	California/Oregon/Washington.	26,300	72	0	72	0.27
Baird's beaked whale ..	California/Oregon/Washington.	2,697	84	0	84	3.12
Small beaked whale	California/Oregon/Washington.	6,318	242	0	^c 242	3.83
Bottlenose dolphin	California/Oregon/Washington (offshore).	1,924	1	0	^d 13	0.68
Striped dolphin	California/Oregon/Washington.	29,211	7	0	^d 46	0.16
Short-beaked common dolphin.	California/Oregon/Washington.	969,861	112	0	^d 179	0.02
Pacific white-sided dolphin.	California/Oregon/Washington.	26,814	6,084	0	6,084	22.69
Northern right-whale dolphin.	California/Oregon/Washington.	26,556	4,318	0	4,318	16.26
Risso's dolphin	California/Oregon/Washington.	6,336	1,664	0	1,664	26.26
False killer whale	n/a	Unknown	n/a	n/a	^e 5	^f n/a
Killer whale	Southern Resident	73	10	0	10	13.70
	Northern Resident	302	73	0	73	24.17
	West Coast Transient	349	.....	.....	.....	20.92
	Offshore	300	.....	.....	.....	24.33
Short-finned pilot whale	California/Oregon/Washington.	836	20	0	^d 29	3.47
HF Cetaceans:						
Pygmy/dwarf sperm whale.	California/Oregon/Washington.	4,111	125	5	130	3.16
Dall's porpoise	California/Oregon/Washington.	27,750	9,762	488	10,250	^g 36.94
Harbor porpoise	Northern Oregon/Washington Coast.	21,487	7,958	283	8,241	^g 38.35
	Northern California/Southern Oregon.	35,769	.....	.....	.....	23.04
Otariid Seals:						
Northern fur seal	Eastern Pacific	608,143	4,592	0	4,592	0.76
	California	14,050	.....	.....	.....	32.68
Guadalupe fur seal	Mexico to California	34,187	2,048	0	2,048	5.99
California sea lion	U.S.	257,606	889	0	889	0.35
Steller sea lion	Eastern U.S.	43,201	7,504	0	7,504	17.37
Phocid Seals:						
Northern elephant seal	California Breeding	179,000	2,754	0	2,754	1.54
Harbor seal	Oregon/Washington Coast	^h 24,732	3,887	0	3,887	15.72

^a In most cases, where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all authorized takes occurred within each stock.

^b Takes are allocated among the three DPSs in the area based on Wade et al. (2017) (Oregon: 32.7% Mexico DPS, 67.2% Central America DPS; Washington/British Columbia: 27.9% Mexico DPS, 8.7% Central America DPS, 63.5% Hawaii DPS).

^c Total for small beaked whale guild (Appendix B of L-DEO's application describes potential take estimates of each species represented in the guild, but we present the authorized take of small beaked whales as a whole).

^d Authorized take increased to mean group size from Barlow (2016).

^e Authorized take increased to mean group size from Mobley et al. (2000).

^f False killer whales that may be taken during this survey are not likely to belong to any designated stock. Therefore we cannot determine the percent of stock that may be taken, but we assume that five individuals would be considered small relative to the abundance of the population they belong to.

^g The percentage of these stocks expected to experience take is discussed further in the Small Numbers section later in the document.

^h As noted in Table 1, there is no current estimate of abundance available for the Oregon/Washington Coast stock of harbor seal. The abundance estimate from 1999, included here, is the best available.

Marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of takes by Level A harassment. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is therefore not accounted for in the take estimates. Also, note that in consideration of the near-field soundscape of the airgun array, we have authorized a different number of takes of mid-frequency cetaceans and pinnipeds by Level A harassment than the number estimated by L-DEO (see Appendix B in L-DEO's IHA application).

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, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which

may consider such things as cost and impact on operations.

L-DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L-DEO will implement mitigation measures for marine mammals. Mitigation measures that will be adopted during the planned surveys include (1) Vessel-based visual mitigation monitoring; (2) Vessel-based passive acoustic monitoring; (3) Establishment of an exclusion zone; (4) Shutdown procedures; (5) Ramp-up procedures; and (6) Vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, within which observation of certain marine mammals requires shutdown of the acoustic source, but also the buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.*, before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone 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 exclusion zone, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). Visual monitoring of the exclusion zone 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 naïve marine mammals

that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the exclusion zone by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the exclusion zone.

L-DEO must use dedicated, trained, NMFS-approved Protected Species Observers (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 must 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, during a deep penetration (*i.e.*, “high energy”) seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience must be designated as the lead for the entire protected species observation team. The lead PSO must 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 exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs must establish and monitor the exclusion and buffer zones. These zones must 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 exclusion zone) must be communicated to the operator to prepare for the potential shutdown of the acoustic source.

During use of the airgun (*i.e.*, anytime the acoustic source is active, including ramp-up), detections of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs must 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 must be relayed to the PSO team. During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs must 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.

While the R/V *Langseth* is surveying in water depths of 200 m or less along the coast between Tillamook Head, Oregon and Barkley Sound, British Columbia (between latitudes 45.9460903° N and 48.780291° N), and within the boundaries of Olympic Coast National Marine Sanctuary, a second vessel with additional PSOs must travel approximately 5 km ahead of the R/V *Langseth*. Two PSOs must be on watch on the second vessel during all such survey operations and must alert PSOs on the R/V *Langseth* of any marine mammal observations so that they may be prepared to initiate shutdowns. This requirement has been modified from what was included in the proposed IHA, which proposed using the second vessel through the entire survey area in waters under 200 m. This requirement was primarily intended to increase the likelihood of PSOs detecting Southern Resident killer whales. However, L-DEO has described practicability concerns with the second vessel, including high cost and limited availability for the time period specified. NMFS carefully considered the area in which the second vessel would effect the most reduction in impacts to Southern Resident killer whales and, accordingly, the area requiring the second vessel has been revised to reflect the areas of highest occurrence (based on Navy, 2019), between Tillamook Head and Barkley

Sound and within the boundaries of Olympic Coast National Marine Sanctuary.

Visual PSOs on both vessels may be on watch for a maximum of four 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 passive acoustic monitoring (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 exclusion zone 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.

Passive acoustic monitoring will 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. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V *Langseth* must 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 1 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 five 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, other than killer whales) detected solely by PAM in the applicable exclusion zone 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 five hours in any 24-hour period.

Establishment of Exclusion and Buffer Zones

An exclusion zone (EZ) 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 must establish a minimum EZ with a 500-m radius. The 500-m EZ must 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 must be shut down.

The 500-m EZ 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 EZ 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.

An extended EZ of 1,500 m must be enforced for all beaked whales, and dwarf and pygmy sperm whales. No buffer zone is required.

Pre-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-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.*, the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic 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-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 exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance);
- Ramp-ups must 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-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 exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-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 pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, pygmy sperm whales, dwarf sperm whales, beaked whales, pilot whales, false killer whales, and Risso’s dolphins);

- Ramp-up must begin by activating a single airgun of the smallest volume in the array and must 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 must not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;

- PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation must 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 exclusion zone. For any longer shutdown, pre-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-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-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 has 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 EZ. 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 must 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 exclusion zone and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable exclusion zone, the acoustic source must be shut down. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown must occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs must be notified but shutdown is not required. L-DEO must also implement shutdown of the airgun array if killer whale vocalizations are detected, regardless of localization.

Following a shutdown, airgun activity must not resume until the marine mammal has cleared the 500-m EZ. The animal would be considered to have cleared the 500-m EZ if it is visually observed to have departed the 500-m EZ, or it has not been seen within the 500-m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm whales, pygmy sperm whales, dwarf sperm whales, pilot whales, beaked whales, killer whales, false killer whales, and Risso’s dolphins.

The shutdown requirement can be waived for small dolphins if an individual is visually detected within the exclusion zone. 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—*Tursiops*, *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Lissodelphis*.

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). The potential for increased shutdowns resulting from such a measure would require the R/V *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 delphinoids) 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 delphinoids 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 delphinoids 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 source vessel.

Visual PSOs must 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 exclusion zone).

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (i.e., animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and pinnipeds, and 30 minutes for mysticetes and all other odontocetes, including sperm whales, pygmy sperm whales, dwarf sperm whales, beaked whales, pilot whales, and Risso's dolphins, with no further observation of the marine mammal(s).

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 of the following are observed at any distance:

- 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;
- An aggregation of six or more large whales;
- A North Pacific right whale; and/or
- A killer whale of any ecotype.

Vessel Strike Avoidance

These measures apply to all vessels associated with the planned survey activity; however, we note that 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. These measures include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be

provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal to broad taxonomic group (i.e., as a large whale or other marine mammal);

2. Vessel speeds must be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel;

3. All vessels must maintain a minimum separation distance of 100 m from large whales (i.e., sperm whales and all mysticetes);

4. All vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel; and

5. When marine mammals are sighted while a vessel is underway, the vessel should 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 should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This recommendation does not apply to any vessel towing gear.

Operational Restrictions

While the R/V *Langseth* is surveying in waters 200 m deep or less along the coast between Tillamook Head, Oregon and Barkley Sound, British Columbia (between latitudes 45.9460903° N and 48.780291° N), and within the boundaries of Olympic Coast National Marine Sanctuary, survey operations must occur in daylight hours only (i.e., from 30 minutes prior to sunrise through 30 minutes following sunset) to ensure the ability to use visual observation as a detection-based mitigation tool and to implement shutdown procedures for species or situations with additional shutdown requirements outlined above (e.g., killer whale of any ecotype, North Pacific right whale, aggregation of six or more large whales, large whale with a calf). The proposed IHA included this requirement to operate only during daylight hours in waters 200 m deep or less throughout the entire survey area. We have revised that requirement to apply only between Tillamook Head and Barkley Sound and within the boundaries of Olympic Coast National Marine Sanctuary because those are the areas with the highest expected Southern Resident killer whale

occurrence, and we determined that requiring this operational restriction throughout the entire survey area was not practicable, in consideration of cost and vessel availability concerns.

Communication

Each day of survey operations, L-DEO must contact NMFS Northwest Fisheries Science Center, NMFS West Coast Region, The Whale Museum, Orca Network, Canada's DFO, Olympic Coast National Marine Sanctuary, and/or other sources to obtain near real-time reporting for the whereabouts of Southern Resident killer whales.

Mitigation Measures in Canadian Waters

As stated above, NMFS cannot authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. Therefore, the mitigation requirements described above do not apply within Canadian territorial waters. The MMPA is applicable in the EEZs of foreign nations, and therefore, the mitigation measures above apply within the Canadian EEZ. However, L-DEO also consulted with Canada's DFO under the Canada Species at Risk Act and must also comply with DFO's mitigation requirements within the Canadian EEZ in order to avoid causing the death of fish or marine mammals and/or the harmful alteration, disruption, or destruction of fish habitat, or causing prohibited effects to aquatic species at risk. Within the Canadian EEZ, L-DEO must:

- Conduct seismic survey activities outside of designated Killer Whale Critical Habitat (KWCH) with a setback that ensures that the estimated sound pressure level has diminished to ≤ 160 dB rms re: 1 μ Pa at the boundary of KWCH;
- Initiate an immediate and complete shutdown of the airgun array if a killer whale (all ecotypes), North Pacific right whale, whale with calf (any species) or aggregation of whales (any species) is observed;
- Initiate an immediate and complete shutdown of the airgun array if a sperm whale or a beaked whale (any species) is sighted within 1,500 m of the airgun array;
- For other observations of marine mammals, initiate an immediate and complete shutdown of the airgun array if these animals are observed within an established EZ with a radius of 1,000 m;
- Refrain from conducting seismic surveys in waters less than 100 m in depth;

- Conduct seismic surveys in waters 100 to 200 m deep during daylight hours only, with a second vessel having two marine mammal observers on watch, positioned 5 km ahead of the R/V *Langseth*;

- Combine enhanced visual observations (e.g., reticle and big-eye binoculars, night vision devices and digital cameras) with non-visual detection methods (e.g., infrared technology (FLIR) and passive acoustic monitoring) to increase the likelihood of detecting marine mammals during ramp up, Beaufort sea states >3 , and nighttime survey operations; and

- Monitor the established EZ with a radius of 1,000 m for 60 minutes prior to initial start-up of the airgun array or resumption of operations following a complete shutdown to allow for the detection of deep diving animals.

While operating within the Canadian EEZ but outside Canadian territorial waters, if mitigation requirements in the IHA differ from the requirements established by DFO, L-DEO must adhere to the most protective measure (e.g., larger EZ, visual monitoring procedures).

Mitigation Measures Considered But Eliminated

As stated above, in determining appropriate mitigation measures, NMFS considers the practicability of the measures for applicant implementation, which may include such things as cost or impact on operations. NMFS has proposed expanding critical habitat for Southern Resident killer whales to include marine waters between the 6.1-m depth contour and the 200-m depth contour from the U.S. international border with Canada south to Point Sur, California (84 FR 49214; September 19, 2019). Though the proposed expansion has not been finalized, due to the habitat features of the area and the higher likelihood of occurrence within the area, NMFS considered implementing a closure area and prohibiting L-DEO from conducting survey operations between the 200-m isobath and the coastline. However, this measure was eliminated from consideration because the closure would not be practicable for L-DEO, as the primary purpose of their survey is to investigate the geologic features that occur within that area. Therefore, NMFS has not prohibited L-DEO from operating in waters within the 200-m isobath for this survey.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the

least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, as well as other measures considered by NMFS described above, NMFS has determined that the mitigation measures provide the means 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.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species,

acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations must take place during daytime airgun operations. During seismic operations, at least five visual PSOs must be based aboard the R/V *Langseth*. Two visual PSOs must be on duty at all time during daytime hours, with an additional two PSOs on duty aboard a second scout vessel at all times during daylight hours when operating in waters shallower than 200 m. Monitoring must be conducted in accordance with the following requirements:

- The operator must provide PSOs with bigeye binoculars (*e.g.*, 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.*, Fujinon or equivalent) solely for PSO use. These must 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 must 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 must be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs must 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 must 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;

- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;
- 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 must be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one 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 must use standardized data collection forms, whether hard copy or electronic. PSOs must 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-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

A report must be submitted to NMFS within 90 days after the end of the cruise. The report must describe the operations that were conducted and sightings of marine mammals near the operations. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report must summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report must 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 must 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 must be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates must be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data must be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above and in the IHA. A final report must be submitted within 30 days following resolution of any comments on the draft report.

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 must report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS West Coast 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 must report the incident to OPR, NMFS and to the NMFS West Coast 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 measures were taken, if any, to avoid strike;

- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

- 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 must 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.

Reporting Species of Concern

To support NMFS's goal of improving our understanding of occurrence of

marine mammal species or stocks in the area (*e.g.*, presence, abundance, distribution, density), L-DEO must immediately report observations of Southern Resident killer whales and North Pacific right whales to OPR, NMFS. L-DEO must also immediately report all sightings of Southern Resident killer whales and North Pacific right whales within Olympic Coast National Marine Sanctuary to the Sanctuary.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of

estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Tables 10 and 11, given that NMFS expects the anticipated effects of the planned geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis. As described above, we have authorized only the takes estimated to occur outside of Canadian territorial waters (Table 10); however, for the purposes of our negligible impact analysis and determination, we consider the total number of takes that are anticipated to occur as a result of the entire survey (including the portion of the survey that would occur within the Canadian territorial waters (approximately six percent of the survey) (Table 11).

TABLE 11—TOTAL ESTIMATED TAKE INCLUDING CANADIAN TERRITORIAL WATERS

Species	Estimated take (excluding Canadian territorial waters)		Estimated take (within Canadian territorial waters)		Total estimated take	
	Level B	Level A	Level B	Level A	Level B	Level A
LF Cetaceans:						
Humpback whale	112	29	21	1	133	30
Blue whale	40	11	7	1	47	11
Fin whale	94	1	2	0	96	1
Sei whale	30	2	2	0	31	2
Minke whale	96	7	6	0	101	7
Gray whale	43	1	23	1	66	2
MF Cetaceans:						
Sperm whale	72	0	1	0	73	0
Baird's beaked whale	84	0	1	0	85	0
Small beaked whale	242	0	5	0	247	0
Bottlenose dolphin	1	0	0	0	1	0
Striped dolphin	7	0	0	0	7	0
Short-beaked common dolphin	112	0	4	0	116	0
Pacific white-sided dolphin	6093	0	333	0	6426	0
Northern right-whale dolphin	4320	0	118	0	4438	0
Risso's dolphin	1669	0	145	0	1814	0
False killer whale	5	0	0	0	5	0
Killer whale (Southern Resident)	10	0	1	0	11	0
Killer whale (Northern Resident)						
Killer whale (West Coast Transient)						
Killer whale (Offshore)	73	0	4	0	77	0

TABLE 11—TOTAL ESTIMATED TAKE INCLUDING CANADIAN TERRITORIAL WATERS—Continued

Species	Estimated take (excluding Canadian territorial waters)		Estimated take (within Canadian territorial waters)		Total estimated take	
	Level B	Level A	Level B	Level A	Level B	Level A
Short-finned pilot whale	20	0	1	0	21	0
HF Cetaceans:						
Pygmy/dwarf sperm whale	125	5	8	0	134	6
Dall's porpoise	9762	488	696	23	10457	511
Harbor porpoise	7958	283	2403	87	10361	369
Otariid Pinnipeds:						
Northern fur seal	4424	0	54	0	4478	0
Guadalupe fur seal	2048	0	113	0	2161	0
California sea lion	889	0	137	0	1026	0
Steller sea lion	7504	0	1920	0	9424	0
Phocid Pinnipeds:						
Northern elephant seal	2754	0	164	0	2918	0
Harbor seal	3887	0	1623	0	5510	0

NMFS does not anticipate that serious injury or mortality will occur as a result of L-DEO's planned survey, even in the absence of mitigation, and none are authorized. As discussed in the *Potential Effects* section of the notice of proposed IHA (85 FR 19580; April 7, 2020), non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We have authorized a limited number of instances of Level A harassment of nine species (low- and high-frequency cetacean hearing groups only) and Level B harassment of 31 marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS, not total deafness, because of the constant movement relative to each other of both the R/V *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 (*i.e.*, since the duration of exposure to loud sounds will be relatively short) and, further, would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the R/V *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. 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).

Potential impacts to marine mammal habitat were discussed in detail in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section of the notice of proposed IHA (85 FR 19580; April 7, 2020). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project areas; 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 relatively short duration (37 days) and temporary nature of the disturbance, 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.

The tracklines of this survey either traverse or are proximal to BIAs for humpback and gray whales (Ferguson *et al.*, 2015). The entire U.S. West Coast within 47 km of the coast is a BIA for migrating gray whale potential presence from January to July and October to December. The BIA for northbound gray whale migration is broken into two phases, Phase A (within 8 km of shore) and Phase B (within 5 km of shore), which are active from January to July and March to July, respectively. The BIA for southbound migration includes waters within 10 km of shore and is active from October to March. There are four gray whale feeding BIAs within the survey area: The Grays Harbor gray

whale feeding BIA is used between April and November; the Northwest Washington gray whale feeding BIA is used between May and November; and the Depoe Bay and Cape Blanco and Orford Reef gray whale feeding BIAs off Oregon are each used between June and November. There are also two humpback whale feeding BIAs within the survey area: The Stonewall and Heceta Bank humpback whale feeding BIA off central Oregon and the northern Washington BIA off the Washington Olympic Peninsula are each used between May and November.

For the humpback whale feeding and gray whale feeding and northbound migration BIAs, L-DEO's survey beginning in June 2021 could overlap with a period where BIAs represent an important habitat. However, only a portion of seismic survey days would actually occur in or near these BIAs, and all survey efforts would be completed by mid-July, still in the early window of primary use for these BIAs. Gray whales are most commonly seen migrating northward between March and May and southward between November and January. As planned, there is no possibility that L-DEO's survey impacts the southern migration, and presence of northern migrating individuals should be below peak during survey operations beginning in June 2021.

Although migrating gray whales may slightly alter their course in response to the survey, the exposure would not substantially impact their migratory behavior (Malme *et al.*, 1984; Malme and Miles 1985; Richardson *et al.*, 1995), and Yazvenko *et al.* (2007b) reported no apparent changes in the frequency of feeding activity in Western gray whales exposed to airgun sounds in their feeding grounds near Sakhalin Island. Goldbogen *et al.* (2013) found

blue whales feeding on highly concentrated prey in shallow depths (such as the conditions expected within humpback feeding BIAs) were less likely to respond and cease foraging than whales feeding on deep, dispersed prey when exposed to simulated sonar sources, suggesting that the benefits of feeding for humpbacks foraging on high-density prey may outweigh perceived harm from the acoustic stimulus, such as the seismic survey (Southall *et al.*, 2016). Additionally, L-DEO must shut down the airgun array upon observation of an aggregation of six or more large whales, which would reduce impacts to cooperatively foraging animals. For all habitats, no physical impacts to BIA habitat are anticipated from seismic activities. While SPLs of sufficient strength have been known to cause injury to fish and fish and invertebrate mortality, in feeding habitats, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area and any injury or mortality of prey species would be localized around the survey and not of a degree that would adversely impact marine mammal foraging. 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 expected. Given the short operational seismic time near or traversing BIAs, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within the designated BIAs.

Critical habitat has been established on the U.S. West Coast for the eastern DPS of Steller sea lions (58 FR 45269; August 27, 1993) and in inland waters of Washington for Southern Resident killer whales (71 FR 69054; November 29, 2006). Critical habitat for the Mexico and Central America DPSs of humpback whales has been established along the U.S. West Coast (86 FR 21082; April 21, 2021), and NMFS has proposed expanding Southern Resident killer whale critical habitat to include coastal waters of Washington, Oregon, and California (84 FR 49214; September 19, 2019). Only a small portion of L-DEO's seismic survey will occur in or near these established or proposed critical habitats.

Critical habitat for Steller sea lions has been established at two rookeries on the Oregon coast, at Rogue Reef (Pyramid Rock) and Orford Reef (Long Brown Rock and Seal Rock). The critical habitat area includes aquatic zones that extend 0.9 km seaward and air zones extending 0.9 km above these rookeries (NMFS 1993). Steller sea lions occupy

rookeries and pup from late-May through early-July (NMFS 2008), which coincides with L-DEO's survey. The Orford Reef and Rogue Reef critical habitats are located 7 km and 9 km from the nearest planned seismic transect line, respectively. Impacts to Steller sea lions within these areas, and throughout the survey area, are expected to be limited to short-term behavioral disturbance, with no lasting biological consequences.

Critical habitat for the threatened Mexico DPS and endangered Central America DPS humpback whales has been established along the U.S. West Coast (86 FR 21082; April 21, 2021). The critical habitat encompasses the humpback whale feeding BIAs described above and generally includes waters between the 50-m isobath and the 1,200-m isobath, though some areas extend further offshore. NMFS determined that prey within humpback whale feeding areas are essential to the conservation of each of the three DPSs of humpback whales for which critical habitat was established (Mexico, Central America, and Western North Pacific DPSs). Critical habitat was therefore designated in consideration of importance that the whales not only have reliable access to prey within their feeding areas, but that prey are of a sufficient density to support feeding and the build-up of energy reserves. Although humpback whales are generalist predators and prey availability can vary seasonally and spatially, substantial data indicate that the humpback whales' diet is consistently dominated by euphausiid species (of genus *Euphausia*, *Thysanoessa*, *Nyctiphanes*, and *Nematoscelis*) and small pelagic fishes, such as northern anchovy (*Engraulis mordax*), Pacific herring (*Clupea pallasii*), Pacific sardine (*Sardinops sagax*), and capelin (*Mallotus villosus*) (Nemoto 1957, 1959; Klumov 1963; Rice Krieger and Wing 1984; Baker 1985; Kieckhefer 1992; Clapham *et al.*, 1997; Neilson *et al.*, 2015). While there are possible impacts of seismic activity on plankton and fish species (e.g., McCauley *et al.*, 2017; Hastings and Popper 2005), the areas expected to be affected by L-DEO's activities are small relative to the greater habitat areas available. Additionally, humpback whales feeding on high-density prey may be less likely to cease foraging when the benefit of energy intake outweighs the perceived harm from acoustic stimulus (Southall *et al.*, 2016). Therefore, this seismic activity is not expected to have a lasting physical impact on humpback whale critical

habitat, prey within it, or overall humpback whale fitness. Any impact would be a temporary increase in sound levels when the survey is occurring in or near the critical habitat and resulting temporary avoidance of prey or marine mammals themselves due to these elevated sound levels. As stated above, L-DEO must shut down the airgun array upon observation of an aggregation of six or more large whales, which would reduce direct impacts to groups of humpback whales that may be cooperatively feeding in the area.

As discussed earlier, in response to comments from the ENGOs, we acknowledge ongoing concern over the health and growth of the California/Oregon/Washington stock of humpback whales, due to vessel strikes and other factors. As described above, though, impacts from this seismic survey are not expected to impact the fitness of any individuals and thereby will not alone, or incrementally in combination with other baseline stressors, adversely affect the stock through impacts on rates of recruitment or survival.

Southern Resident Killer Whales

In acknowledgment of our concern regarding the status of Southern Resident killer whales, including low abundance and a decreasing trend, we address impacts to this stock separately in this section.

L-DEO's planned tracklines do not overlap with existing Southern Resident killer whale habitat, but NMFS has proposed expanding Southern Resident critical habitat to include waters between the 6.1-m and 200-m depth contours from the U.S. international border with Canada south to Point Sur, California (84 FR 49214; September 19, 2019). The proposed expanded critical habitat areas were identified in consideration of physical and biological features essential to conservation of Southern Resident killer whales (essential features): (1) Water quality to support growth and development; (2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) Passage conditions to allow for migration, resting, and foraging. NMFS did not identify in-water sound levels as a separate essential feature of existing or proposed expanded critical habitat areas, though anthropogenic sound is recognized as one of the primary threats to Southern Resident killer whales (NMFS 2019). Exposure to vessel noise and presence of whale watching boats can significantly affect the foraging behavior of Southern Resident killer

whales (Williams *et al.*, 2006; Lusseau *et al.*, 2009; Giles and Cendak 2010; Senigaglia *et al.*, 2016). Nutritional stress has also been identified as a primary cause of Southern Resident killer whale decline (Ayres *et al.*, 2012; Wasser *et al.*, 2017), suggesting that reduced foraging effort may have a greater impact than behavioral disturbance alone. However, these studies have primarily focused on effects of whale watch vessels operating in close proximity to Southern Resident killer whales, and commercial shipping traffic in the Salish Sea (*i.e.*, the inland waters of Washington and British Columbia). Commercial whale watch and private recreational vessels operating in the waters around the San Juan Islands in summer months number in the dozens (Erbe 2002), and at least 400 piloted vessels (commercial vessels over 350 gross tons and pleasure craft over 500 gross tons that are required to be guided in and out of the Port of Vancouver by British Columbia Coast Pilots) transit through Haro Strait each month (Joy *et al.*, 2002). Concentration of vessel traffic on the outer coast, where the survey area occurs, is much lower than in the inland waters (Cominelli *et al.*, 2018), suggesting that effects from vessel noise may be lower than in inland waters. Increased noise levels from the survey in any specific area would be short-term due to the mobile nature of the survey, unlike the near-constant vessel presence in inland waters.

Approximately 30 percent of L-DEO's total tracklines occur within the 200-m isobath along the coast of Oregon, Washington, and British Columbia. L-DEO is required to shut down seismic airguns immediately upon visual observation or acoustic detection of killer whales of any ecotype at any distance to minimize potential exposures of Southern Resident killer whales, and must operate within the 200-m isobath in daylight hours only, to increase the ability to visually detect killer whales and implement shutdowns. Southern Resident killer whales exposed to elevated sound levels from the R/V *Langseth* and the airgun array may reduce foraging time, but no survey tracklines or ensonified area overlap with the areas of highest estimated densities of Southern Resident killer whales (see Table 9 of this notice and Figures 7–9 and 7–11 in the U.S. Navy's MSDD (U.S. Navy 2019)). While Southern Resident killer whales may be encountered outside of these areas of highest density, the likelihood is significantly decreased and the relatively small amount of time of

altered behavior would not likely affect their overall foraging ability. Short-term impacts to foraging ability are not likely to result in significant or lasting consequences for individual Southern Resident killer whales or the population as a whole (Ayres *et al.*, 2012). Due to the mobile nature of the survey, animals would not be exposed to elevated sounds for an extended period, and the proposed critical habitat contains a large area of suitable habitat that would allow Southern Resident killer whales to forage away from the survey. Noren *et al.* (2016) reported that although resident killer whales increase energy expenditure in response to vessel presence, the increase is considered to be negligible.

No permanent hearing impairment (Level A harassment) is anticipated or authorized. Authorized takes of Southern Resident killer whales would be limited to Level B harassment in the form of behavioral disturbance. We anticipate 11 instances of Level B harassment of Southern Resident killer whales (10 takes by Level B harassment authorized in this IHA and one take by Level B harassment within Canadian territorial waters), which we expect would likely occur to a smaller subset of the population on only a few days. Limited, short term behavioral disturbance of the nature expected here would not be expected to result in fitness-level effects to individual Southern Resident killer whales or the population as a whole.

Negligible Impact Conclusions

The survey will be of short duration (37 days of seismic operations), and the acoustic "footprint" of the survey is small relative to the ranges of the marine mammals that will potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the survey area. Short term exposures to survey operations are not likely to significantly disrupt marine mammal behavior, and the potential for longer-term avoidance of important areas is limited.

The prescribed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the required mitigation will be effective in

preventing, at least to some extent, potential PTS in marine mammals that may otherwise occur in the absence of the mitigation (although all authorized PTS has been accounted for in this analysis). Further, for Southern Resident Killer Whales (as described above), additional mitigation (*e.g.*, second monitoring vessel, daylight only surveys) is expected to increase the ability of PSOs to detect killer whales and shut down the airgun array to reduce the instances and severity of behavioral disturbance.

While operating within the Canadian EEZ, L-DEO will implement certain measures prescribed by Canada's DFO that are more protective than those prescribed by NMFS under the MMPA. These include a requirement to avoid operating within or nearby designated Southern Resident or Northern Resident killer whale critical habitat such that the ensonified area above the 160 dB rms threshold does not extend inside critical habitat, shutting down the airgun array if a sperm whale or a beaked whale (any species) is observed within 1,500 m, and shutting down the airgun array if any species of marine mammal is observed within 1,000 m of the array.

Additionally, throughout the entire survey area within the Canadian EEZ, L-DEO will not conduct survey operations in waters 100 m or less and will conduct seismic surveys in waters 100 to 200 m deep during daylight hours only, with a second vessel having two marine mammal observers on watch, positioned 5 km ahead of the R/V *Langseth*. L-DEO must also combine enhanced visual observations (*e.g.*, reticle and big-eye binoculars, night vision devices and digital cameras) with non-visual detection methods (*e.g.*, infrared technology (FLIR) and PAM) to increase the likelihood of detecting marine mammals during ramp up, Beaufort sea states >3, and night time survey operations. Finally, L-DEO must monitor the established exclusion zone with a radius of 1,000 m for 60 minutes prior to initial start-up of the airgun array or resumption of operations following a complete shutdown to allow for the detection of deep diving animals.

NMFS concludes that exposures to marine mammal species and stocks due to L-DEO's planned survey will result in only short-term (temporary and short in duration) effects to individuals exposed, over relatively small areas of the affected animals' ranges. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the

authorized take to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
 - The planned activity is temporary and of relatively short duration (37 days);
 - The anticipated impacts of the activity on marine mammals will primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
 - The number of instances of potential PTS that may occur are expected to be very small in number. Instances of potential PTS that are incurred in marine mammals are expected to be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
 - The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
 - The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey will be temporary and spatially limited, and impacts to marine mammal foraging will be minimal; and
 - The mitigation requirements, including visual and acoustic monitoring, shutdowns, and enhanced measures for areas of biological importance (e.g., additional monitoring vessel, daylight operations only) are expected to minimize potential impacts to marine mammals (both amount and severity).
 - Additionally as described above for Southern Resident killer whales specifically, anticipated impacts are limited to few days of behavioral disturbance for any one individual and additional mitigation (e.g., additional monitoring vessel, survey timing, shutdowns) are expected to ensure that both the numbers and severity of impacts to this stock are minimized, and, therefore the authorization of Southern Resident killer whale take is not expected to impact the fitness of any individuals, much less rates of recruitment or survival.
- 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 prescribed mitigation and monitoring measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

There are two stocks for which the estimated instances of take appear high when compared to the stock abundance (Table 10)—the California/Oregon/Washington Dall's porpoise stock and the Northern Oregon/Washington Coast harbor porpoise stock. However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. We discuss these in further detail below.

For all other stocks (aside from the two referenced above and described below), the authorized take is less than one-third of the best available stock abundance (recognizing that some of those takes may be repeats of the same individual, thus rendering the actual percentage even lower). Additionally, we note that the authorized take is compared to the stock abundance for MMPA designated stocks, which for many species are limited to U.S. waters and do not include animals within the Canadian EEZ. Therefore, for species with transboundary populations, the actual percentage of the population affected is lower than that shown in Table 10.

The expected take of the California/Oregon/Washington stock of Dall's porpoises, as a proportion of the population abundance, is 36.94 percent, if all takes are assumed to occur for unique individuals. In reality, it is unlikely that all takes would occur to different individuals. L-DEO's survey area represents a small portion of the stock's overall range (Caretta *et al.*,

2017), and it is more likely that there will be multiple takes of a smaller number of individuals within the action area. In addition, Best *et al.* (2015) estimated the population of Dall's porpoise in British Columbia to be 5,303 porpoises based on systematic line-transect surveys of the Strait of Georgia, Johnstone Strait, Queen Charlotte Sound, Hecate Strait, and Dixon Entrance between 2004 and 2007. In consideration of the greater abundance estimate combining the U.S. stock and animals in British Columbia, and the likelihood of repeated takes of individuals, it is unlikely that more than one-third of the stock will be exposed to the seismic survey.

When assuming all estimated takes of harbor porpoise (8,241 total takes by Level A and B harassment) will occur to the Northern Oregon/Washington Coast stock, the take appears high relative to stock abundance (38.35 percent). In reality, takes will occur to both the Northern Oregon/Washington Coast and Northern California/Southern Oregon stocks, and therefore, the number of takes of each stock will be much lower. NMFS has no commonly used method to estimate the relative proportion of each stock that will experience take, but here we propose to apportion the takes between the two stocks based on the stock boundary (Lincoln City, Oregon) and the approximate proportion of the survey area that will occur on either side of the stock boundary. North of Lincoln City, Oregon, harbor porpoises belong to the Northern Oregon/Washington Coast stock, and south of Lincoln City, harbor porpoises belong to the Northern California/Southern Oregon stock. Approximately one-third of the planned survey occurs south of Lincoln City, therefore one-third of the total estimated takes are assumed to be from the Northern California/Southern Oregon stock. The remaining two-thirds of the estimated takes are assumed to be from the Northern Oregon/Washington Coast stock. The estimated one-third of total takes assigned to the Northern California/Southern Oregon stock (2,747 total Level A and Level B takes) represent 7.68 percent of the stock abundance, which NMFS considers to be small relative to the stock abundance. In addition, the survey area represents a small portion of the stock's range, and it is likely that there will be multiple takes of a small portion of individuals, further reducing the number of individuals exposed. The estimated two-thirds of total takes assigned to the Northern Oregon/Washington Coast stock (5,494 takes) represent 25.57 percent of the stock abundance, which

NMFS considers to be small relative to the stock abundance. Additionally, the Northern Oregon/Washington Coast stock abundance estimate does not include animals in Canadian waters (Caretta *et al.*, 2017). Best *et al.* (2015) estimated a population abundance of 8,091 harbor porpoises in British Columbia. The estimated takes of animals in the northern portion of the survey area (north of Lincoln City) represent 18.57 percent of the combined British Columbia and Northern Oregon/Washington Coast abundance estimates, which NMFS considers to be small relative to the stock abundance.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS has adopted the NSF's EA, as we have determined that it includes adequate information analyzing the effects on the human environment of issuing the IHA, and prepared a FONSI. NSF's EA is available at <https://www.nsf.gov/geo/oce/envcomp/>, and NMFS' FONSI is available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally

whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L-DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of ESA-listed blue whales, fin whales, sei whales, sperm whales, Central America DPS humpback whales, Mexico DPS humpback whales, Southern Resident killer whale DPS, and Guadalupe fur seals, and is not likely to destroy or adversely modify designated Steller sea lion or humpback whale critical habitat. There is no designated critical habitat in the action area for the other ESA-listed species.

Authorization

As a result of these determinations, NMFS has issued an IHA to L-DEO for conducting a marine geophysical survey in the northeast Pacific Ocean beginning in June 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 24, 2021.

Catherine Marzin,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

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Part IV

Federal Communications Commission

47 CFR Part 54

Establishing Emergency Connectivity Fund To Close the Homework Gap;
Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–93; FCC 21–58; FR ID 27313]

Establishing Emergency Connectivity Fund To Close the Homework Gap

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) establishes the Emergency Connectivity Fund Program (Program) to provide funding for schools and libraries for the purchase, during the coronavirus (COVID–19) pandemic, of connected devices and broadband connections for use by students, school staff, and library patrons.

DATES: Effective May 28, 2021.

FOR FURTHER INFORMATION CONTACT:

Johnnay Schrieber, Wireline Competition Bureau, (202) 418–7400 or by email at Johnnay.Schrieber@fcc.gov. The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in WC Docket No. 21–93; FCC 21–58, adopted May 10, 2021 and released May 11, 2021. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-launch-717-billion-connectivity-fund-program-0>. See also the notification titled “Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices To Address the Homework Gap During the Pandemic,” published at 86 FR 15172 (March 22, 2021).

I. Introduction

1. In this Report and Order, the Commission establishes the Emergency Connectivity Fund Program (Program) to provide funding for schools and libraries for the purchase, during the coronavirus (COVID–19) pandemic, of connected devices and broadband connections for use by students, school staff, and library patrons. Before the pandemic, millions of students who lacked home broadband connections

and access to computers were caught in the “Homework Gap.” One study estimates that last spring, more than 15 million public school students did not have home access to either an internet connection or a device adequate for distance learning, and approximately nine million of those students lived in households with neither an adequate connection nor an adequate device for distance learning. The pandemic has only exacerbated the inequities between students who have a broadband connection and those who do not. This action addresses those inequities, helping to provide all students, school staff, and library patrons with the basic tools they need to engage in online learning and in so many other vital aspects of our increasingly digital lives.

2. Today, even as there are hopeful signs that the pandemic is receding in this country, many schools and libraries continue to rely on remote learning and virtual library services as they adapt to changing circumstances. Schools, with assistance from a wide array of Federal, state, and local government resources, public interest groups, and internet service providers, have worked to equip millions of students with tablet and laptop computers, Wi-Fi hotspots, and other forms of broadband connections. Yet millions of students have remained unconnected to the internet. At the same time, the closure of many libraries means that library patrons who were previously dependent on computer and internet access at their local libraries lost their primary source of broadband access. Just as schools have attempted to help meet their students' and staffs' connectivity needs, libraries across the country also have attempted to assist patrons in meeting their connectivity needs during the pandemic.

3. To provide relief from the pandemic, on March 11, 2021, the American Rescue Plan Act of 2021 (the American Rescue Plan or Act) was signed into law. This Report and Order implements section 7402 of the Act, which established a \$7.171 billion Emergency Connectivity Fund in the Treasury of the United States. Section 7402 directed the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations other than a school or library.

4. Pursuant to section 7402 of the American Rescue Plan, the Commission now establishes the Emergency

Connectivity Fund Program. The support provided through this Program will first allow eligible schools and libraries to seek funding for upcoming purchases of eligible equipment, including Wi-Fi hotspots, modems, routers, and connected devices, as well as advanced telecommunications and information services, to meet the remote learning needs of students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning during the upcoming school year. If additional funding remains available after the provision of support to eligible schools and libraries for future purchases of eligible equipment and services, the Commission will provide schools and libraries an opportunity to apply for reimbursement of the reasonable costs they have already incurred in purchasing eligible equipment and services to meet the unmet needs of their students, school staff, and library patrons who otherwise lacked access to equipment or internet access services sufficient to engage in remote learning during the COVID–19 pandemic.

5. The Emergency Connectivity Fund Program is separate from the E-Rate Program, which has long provided funding for broadband services delivered to and within schools and libraries. In the interest of efficiency and simplicity, however, the goals and measures, rules, and processes the Commission adopts in this document for the Emergency Connectivity Fund Program leverage its experience with the E-Rate Program.

II. Discussion

6. In adopting rules to govern the Emergency Connectivity Fund Program, the Commission recognizes that Congress has directed it to act with haste, conducting a rulemaking within 60 days of the date of enactment of the American Rescue Plan. At the same time, the Commission is mindful of the latitude Congress has granted it to determine what costs are reasonable to reimburse, as well as the purpose of the Fund to address the connectivity needs of students, school staff, and library patrons who would otherwise be unable to access educational and library services during the pandemic. Pursuant to that authority, and consistent with Congress' intent, in this Report and Order, the Commission moves quickly to open an application process that allows eligible schools and libraries to first seek funding for purchases during the coming school year of eligible equipment and advanced

telecommunications and information services to meet the needs of students, school staff, and library patrons who would otherwise lack access to basic educational opportunities and library services. If the demand for these future purchases does not exceed available funds, the Commission will open an additional application window to allow schools and libraries to seek funding for eligible equipment and broadband internet access services that they purchased earlier in the pandemic to address the needs of students, school staff, and library patrons who would otherwise have lacked access to devices and services sufficient to meet their remote learning needs.

7. Based on its experience with the E-Rate Program, the Commission also draws on the existing E-Rate rules and processes to provide clear rules and establish quick and easy to understand processes for requesting and receiving support from the Emergency Connectivity Fund Program, along with appropriate safeguards to protect the Program from waste, fraud, and abuse. In this way, the Commission seeks to maximize the efficiency and effectiveness of the Emergency Connectivity Fund Program and focus limited funding to target the needs of those students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning and virtual library services during the COVID-19 emergency period.

A. Performance Goals and Measures

8. The Emergency Connectivity Fund Program will provide funding for schools and libraries to meet the otherwise unmet connectivity needs of students, school staff, and library patrons during the COVID-19 pandemic. Based on the record in this proceeding and its obligations under the American Rescue Plan, the Commission establishes three goals for the Emergency Connectivity Fund Program: (1) Connecting and facilitating remote learning for students, school staff, and library patrons who would otherwise lack adequate access to connected devices and broadband internet access connectivity during the pandemic; (2) ensuring that the Universal Service Administrative Company (USAC) efficiently and effectively administers the Emergency Connectivity Fund Program; and (3) providing pricing transparency for eligible equipment and services to inform future policy and purchasing decisions. The Commission also adopts associated performance measures and targets to determine

whether the Emergency Connectivity Fund Program is successfully achieving these goals. Setting clear goals for the Program, with performance measures and targets to determine success, will help focus its efforts as the Commission oversees use of the Emergency Connectivity Fund to connect and support students, school staff, and library patrons during the COVID-19 pandemic.

1. Connecting Students, School Staff, and Library Patrons During the Pandemic

9. The Commission adopts as its first goal for the Emergency Connectivity Fund Program helping to meet the need for connected devices and broadband internet access services to facilitate remote learning during the COVID-19 pandemic for students, school staff, and library patrons. The pandemic has caused students, school staff, and library patrons nationwide to shift from in-person instruction to remote learning. For some students and school staff (and many library patrons), this shift was relatively seamless, and education was able to continue remotely with minimal disruption. For millions of others, however, those who lacked (many of whom continue to lack) necessary connected devices and broadband services, the transition to remote learning has been filled with barriers. Many school districts have spent scarce resources purchasing devices and internet connections for students and staff to help bridge the gap. And, libraries have done the same for library patrons. Despite these best efforts, many schools and libraries nationwide lack adequate funding to ensure that all students, school staff, and library patrons are connected and able to fully participate in remote learning opportunities.

10. The Commission will use two metrics to measure the success of the Emergency Connectivity Fund Program in addressing students', school staffs', and library patrons' otherwise unmet need for connected devices and broadband connectivity: (1) The number of connected devices funded with Emergency Connectivity Fund support that are provided to students, school staff, and library patrons who would otherwise lack access to a device sufficient to enable them to engage in remote learning; and (2) the number of broadband internet access connections (including through use of Wi-Fi hotspots) funded with Emergency Connectivity Fund Program support that are provided to students, school staff, and library patrons who would otherwise lack access to internet

connectivity sufficient to engage in remote learning. To measure success in meeting this goal, the Commission agrees with commenters that recommend the Commission collect information about the number of connected devices and broadband connections that are used to connect students, school staff, and library patrons through the Emergency Connectivity Fund Program and release this data publicly. The Commission directs USAC to release this data as part of its Open Data project for the Emergency Connectivity Fund Program.

11. The Commission also appreciates the opportunity the Emergency Connectivity Fund Program presents to gather better, more accurate information about the number of students without connected devices and broadband services sufficient to engage in remote learning and the progress made towards closing that Homework Gap. At the same time, the Commission recognizes that during the pandemic school districts have been trying to meet the needs of their students and staff and therefore, they have not collected uniform data sets about their students' connectivity requirements. As part of the application process, the Commission will, therefore, collect schools' and school districts' best estimates about the number of students in their school or school district who did not have access to adequate connected devices, broadband connections, or both when the pandemic began; the number of students who do not currently have access to adequate connected devices, broadband internet access connections, or both; and how they expect those numbers to change with receipt of requested Emergency Connectivity Fund Program support. Given the pressing demands on schools, the Commission will not dictate specific data collection requirements, but instead will ask each school or school district to describe how and when they collected the information that they use for the estimates provided in their responses. The Commission directs USAC to release this data as part of its Open Data project for the Emergency Connectivity Fund Program.

2. Efficiently and Effectively Administer Funding

12. The Commission adopts as its second goal to ensure that the Commission and USAC efficiently and effectively commit funding and distribute support from the Emergency Connectivity Fund. The \$7.17 billion Emergency Connectivity Fund must be quickly made available to meet the immediate connectivity needs of

students, school staff, and library patrons nationwide. To make that happen, the Commission and USAC must make the application and reimbursement processes simple and efficient. The Commission will measure success towards this goal in two main ways: (1) Speed and ease of the application process and (2) speed and ease of the reimbursement process.

13. *Speed and Ease of Application Process.* In the first instance, the application process should be easy for applicants to navigate and to use in requesting funding for eligible equipment and services. The Commission can measure success in terms of how quickly Emergency Connectivity Fund Program applications are reviewed, and funds are committed following the close of the filing window. Consistent with the suggestions of some commenters, the Commission sets targets for how quickly USAC is able to review applications and release funding commitment decision letters after the filing window closes. Some commenters have suggested that the Commission adopts performance metrics that require USAC to complete its review of applications within 30 days of filing date, or within 30 days of receiving additional information from the applicant. While it is important that USAC act expeditiously, the Commission also wants to give USAC sufficient time to do an appropriate review of each application. The Commission therefore set its targets having USAC issue funding decision commitment letters for 50% of the workable applications within 60 days of the close of the first application window and 70% of the workable applications within 100 days of the close of the first application filing window. Based on experience with USAC's issuance of funding commitment decision letters in the E-Rate Program, the Commission finds that these targets will further the goal of quickly having applications reviewed and funding committed, while allowing it to also track USAC's performance.

14. *Speed and Ease of Reimbursement Process.* Consistent with suggestions in the record, the Commission will also measure the ease of the reimbursement process and USAC's speed in providing an invoice submission process for Program participants and in reviewing invoices that have been submitted. The Commission appreciates the suggestion of several commenters that the Commission set a target for USAC of reviewing invoices within 30 days of submission, but in light of the very short time frame under which the Commission is adopting rules for this

new Program, the Commission does not yet have enough information to set specific invoice review targets. Instead, the Commission directs the Bureau in consultation with the Office of the Managing Director to work closely with USAC on the creation of an invoicing system for the Emergency Connectivity Fund Program that allows Program participants to easily submit invoices and USAC to promptly review those invoices.

3. Inform Future Purchasing and Policy Decisions Through Pricing Transparency for Eligible Equipment and Services

15. The Commission adopts its third goal informing future purchasing and policy decisions through pricing transparency for eligible equipment and services. The Commission's experience administering and collecting data on the Emergency Connectivity Fund Program will provide valuable information for future purchasing decisions for schools and libraries. The Commission therefore agrees with commenters that argue one crucial aspect of the Emergency Connectivity Fund Program is pricing transparency. The Commission thus requires USAC to make the pricing data from the Emergency Connectivity Fund Program publicly available through its Open Data platform. The publication of this pricing data will allow applicants to review past prices paid by schools and libraries across the country for same and similar eligible equipment and services. Doing so will put them in a better bargaining position when making such purchases in the future. The Commission directs USAC to make the Emergency Connectivity Fund Program application and pricing data publicly available within 160 days after the first Emergency Connectivity Fund Program application filing window closes.

16. To measure progress towards this goal, USAC, subject to oversight by the Bureau and the Office of Economics and Analytics, should conduct or commission at least one survey of participating schools and libraries to determine whether the data transparency measures built into the Emergency Connectivity Fund Program are enabling program participants to make more cost-effective purchasing decisions in the future. The Commission will share the results of the survey with interested stakeholders and other policy makers, so that it can inform future policy decisions.

B. Eligible Schools and Libraries

17. Consistent with Congressional direction in section 7402, the Commission adopts rules providing that

all of the schools, libraries, and consortia of schools and libraries that are eligible for support under the E-Rate Program are also eligible to request and receive support through the Emergency Connectivity Fund Program. In so doing, the Commission also adopts for purposes of the Emergency Connectivity Fund Program, the same definitions of "elementary school," "secondary school," "library," and "library consortium" as are used in the E-Rate rules, with one minor modification explained below. Those definitions are grounded in the definitions of "elementary school" and "secondary school" in section 254(h)(7) of the Communications Act, as well as the limitations on eligibility set forth in section 254(h)(4) of the Communications Act. The Commission also specifies that, as with the E-Rate Program, pursuant to section 254(h)(4) of the Communications Act, the following entities are not eligible to receive support from the Emergency Connectivity Fund: (1) For-profit schools and libraries; (2) schools and libraries with endowments in excess of \$50,000,000; (3) libraries whose budgets are not completely separate from any schools; and (4) library or library consortium that are not eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).

18. The LSTA was recently amended to make clear that Tribal libraries are eligible for support from a state library administrative agency under LSTA. Consistent with the those amendments, and guidance from the Institute of Museum and Library Services, the Commission clarifies that Tribal libraries, which are by statute eligible for support from state library administrative agencies under the LSTA, are eligible for support from the Emergency Connectivity Fund. The current E-Rate eligibility rules were adopted long before the LSTA was amended and include a citation to an outdated version of that LSTA. Because this proceeding is focused on the implementation of the Emergency Connectivity Fund, the Commission does not amend the E-Rate rules at this time to reflect the change to the LSTA.

19. The Commission declines to extend eligibility for support from the Emergency Connectivity Fund Program to other entities that are not eligible for E-Rate support. The Commission is sympathetic to suggestions from commenters that the Commission expands the list of entities eligible to receive funding from the Emergency Connectivity Fund to include a wide variety of public and private institutions

that have done excellent work helping students and members of the public gain access to broadband internet access services and end-user devices during the pandemic. However, the Act specifies the entities eligible for Emergency Connectivity Fund Program support and does not authorize the Commission to expand the definition of eligible entities. Thus, even when such institutions are acting in coordination with schools or libraries, there is no authority to permit such institutions to receive Emergency Connectivity Fund Program support. Moreover, straying from the focus of the statute would divert much-needed funding from schools and libraries in dire need of assistance.

20. The Commission clarifies that eligible schools and libraries do not need to be current E-Rate participants, but eligible entities, particularly those that have not applied for E-Rate support, should be prepared to demonstrate eligibility as a school or library under Program rules eligible for support from the Emergency Connectivity Fund Program during USAC's application review.

C. Eligible Equipment and Services

21. The Commission looks to section 7402 of the American Rescue Plan to determine what equipment and services are eligible for support from the Emergency Connectivity Fund Program. The American Rescue Plan requires that the Emergency Connectivity Fund be used for the purchase of eligible equipment and/or "advanced telecommunications and information services, or both." Section 7402(d)(6) of the American Rescue Plan defines eligible equipment as (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices. Wi-Fi hotspot is defined as "a device that is capable of— (A) receiving advanced telecommunications and information services; and (B) sharing such services with another connected device through the use of Wi-Fi." "Connected devices" are defined as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services. Section 7402(d)(1) defines "advanced telecommunications and information services" to mean advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act.

22. *Eligible Equipment.* Consistent with the definitions in section 7402, the Commission adopts rules specifying that the following types of equipment are

eligible for support from the Emergency Connectivity Fund Program: Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices. The Commission agrees with those commenters that point out that air-cards used to connect end-user devices to the internet through cellular data services are wireless modems, and as such are eligible for support from the Emergency Connectivity Fund Program. The Commission finds inapplicable to the Emergency Connectivity Fund Program the E-Rate Program's requirement that applicants demonstrate that air cards (and wireless data plans) are more cost-effective than fixed wireless broadband services before seeking support for air cards (and wireless data plans). The Commission adopted that requirement for the E-Rate Program because schools and libraries require very substantial bandwidth connections to meet their on-campus connectivity needs, which in turn would require them to seek E-Rate support for large numbers of air cards to meet those needs. By contrast, individual students, school staff, or library patrons do not need enterprise level bandwidth, and in some instances air cards may be one of the few options available to provide connectivity to them.

23. *Connected Devices.* Based on the record, the Commission defines connected devices as laptop computers and tablet computers that are capable of connecting to advanced telecommunications and information services. The Commission expects connected devices to be Wi-Fi enabled and able to support video conferencing platforms and other software necessary to ensure full participation in remote learning. However, recognizing that schools and libraries have had to make challenging purchasing decisions to equip students, school staff, and library patrons with devices during the pandemic, the Commission declines to establish minimum screen size or system requirements for the connected devices supported by the Emergency Connectivity Fund Program and instead rely on schools and libraries to make the appropriate choices about their needs. At the same time, however, the Commission expects connected devices to be accessible to and usable by individuals with disabilities. If people with disabilities require connected devices to connect to the internet, the Commission expects that schools and libraries will request such devices to accommodate disabilities if needed.

24. By defining connected devices as "laptop computers, tablet computers, or similar end-user devices that are

capable of connecting to advanced telecommunications and information services," Congress provided the Commission the discretion to include connected devices beyond laptop and tablet computers as long as they are "similar." Based on the record, the Commission excludes desktop computers from its definition of "connected devices." Although the Commission recognizes the functionality and value of desktop computers, the Commission finds that desktop computers are not similar to laptop computers and tablets because they lack the portability of laptop and tablet computers, which can be a drawback for many students, school staff, and library patrons seeking to engage in remote learning. The Commission also finds it significant that instead of identifying desktop computers or any other stationary devices as eligible connected devices Congress identified a set of portable devices as eligible "connected devices" and gave it discretion to determine whether other devices are similar to those portable devices.

25. Also, based on the record, the Commission excludes mobile phones, including smartphones, from its definition of "connected device" because they lack the same functionality students, school staff, and library patrons need to perform necessary remote learning activities, homework, or research, and thus the Commission does not consider them to be "similar" to laptop or tablet computers for the purposes intended by the statute here. Numerous commenters, including state education departments, education groups and public interest groups agree with excluding mobile phones from the definition of connected devices because such devices do not sufficiently allow students, school staff, and library patrons to meaningfully participate in remote learning activities. In establishing the Emergency Connectivity Fund, Congress intended to provide funding for devices that support remote learning. The record demonstrates that while a smartphone may be capable of connecting a student to his or her teacher or supplementing learning, it can limit the student's ability to develop a class presentation or draft a research paper. At least one smartphone vendor shows that some of its smartphones are capable of being made more functional by being connected to larger display screens for video conferencing and to peripherals, like a keyboard and mouse. The fact that some smartphones can be made more functional for educational purposes by

adding these extra peripherals does not persuade the Commission that smartphones are similar end-user devices meeting the remote learning needs of students, school staff, or library patrons. The Commission also finds it significant that the Commission did not receive a single comment or other filing from a school or library claiming that they purchased smartphones to use instead of laptops or tablets for their students, school staff or library patrons or have found smartphones to be good substitutes for tablets or laptop computers.

26. The Commission also finds unpersuasive the arguments of some commenters that smartphones should be eligible for Emergency Connectivity Fund Program support as eligible devices because they meet the definition of a Wi-Fi hotspot, because some schools were forced to purchase smartphones to act as Wi-Fi hotspots due to supply chain issues at the start of the pandemic, or because the ability of smartphones to act as Wi-Fi hotspots was mentioned in the legislative history. Section 7402(b) of the American Rescue Plan tasks the Commission with determining whether the costs of requests for equipment are reasonable, and even with a cap on the reasonable support amount for Wi-Fi hotspots, the Commission does not find it reasonable to use limited Emergency Connectivity Fund Program support to reimburse schools and libraries for costly smartphones used as Wi-Fi hotspots, when much less expensive hotspots can serve the same purpose. This is particularly true because smartphones have myriad other functions, such as cellular voice service, and the Commission would have to choose between inappropriately expending resources on functions that are not core educational services that section 7402(a) of the American Rescue Plan was designed to fund, or allowing applicants to cost allocate eligible and ineligible portions of smartphones used as Wi-Fi hotspots. However, importing cost allocation requirements into the Emergency Connectivity Fund Program is inconsistent with the Commission's goals of administrative simplicity and fast funding decisions. It would create complexity for the applicants and for the USAC reviewers and would inevitably slow down the Emergency Connectivity Fund application processing. As such, the Commission agrees with commenters that urge it not to require cost allocation decisions in the Emergency Connectivity Fund Program and decline to include smartphones in the list of eligible

connected devices or Wi-Fi hotspots for the Program.

27. *Advanced Telecommunications and Information Services.* Although section 7402(d)(1) of the American Rescue Plan defines "advanced telecommunications and information services" by reference to section 254(h) of the Communications Act, the Communications Act does not offer a definition of that term. Instead, in the context of determining what services should receive E-Rate support, the Commission has recognized that section 254 grants "the Commission broad and flexible authority to set the list of [E-Rate supported] services" and "to design the specific mechanisms of support." As the Commission has recognized, "[t]his authority reflects Congress's recognition that technology needs are constantly "evolving" in light of "advances in telecommunications and information technologies and services." As the Commission has done in the E-Rate context, the Commission finds that because the amount of available funding is finite, "the Commission must make thoughtful decisions about what services are not just permissible to support, but are the most essential to support."

28. The Commission's notification, published March 22, 2021, sought comment on treating a subset of the services currently eligible for category one E-Rate support as eligible "advanced telecommunications and information services" for the purposes of the Emergency Connectivity Fund Program. Based on the statutory text enumerating the equipment eligible for the Emergency Connectivity Fund (*i.e.*, Wi-Fi hotspots, modems, routers, devices that combine a modem and a router, and connected devices), as well as the statutory language allowing Emergency Connectivity Fund support for the "purchase" of advanced telecommunications and information services, the Commission understands the legislation to be focused on quickly reaching students learning at home primarily through commercially available internet access services delivered via Wi-Fi hotspots with wireless broadband connectivity or via leased modems with fixed broadband connectivity, generally delivered from a local internet service provider. The Commission therefore finds, that, unless there is no internet access service available to purchase in an area, to qualify for funding as advanced telecommunications or information services, schools and libraries will only be reimbursed for purchasing a commercially available service providing a fixed or mobile broadband

internet access connection for off-campus use by students, school staff, or library patrons.

29. *Dark Fiber and New Networks.* With the one exception for areas where no service is available for purchase, the Commission excludes from eligibility funding for dark fiber and the construction of new networks, including the construction of self-provisioned networks. In so doing, the Commission agrees with commenters that argue that, as a general rule, using Emergency Connectivity Fund Program support to construct new networks or self-provisioned networks is inconsistent with Congress' intent to fund "the purchase" of broadband services to meet students' school staff and library patrons' immediate needs, rather than the construction of networks. As such, the Commission disagrees with those commenters that argue that Congress intended that the Emergency Connectivity Fund be used to support everything eligible under the E-Rate Program's category one services because it referenced "advanced telecommunications and information services" under section 254(h) of the Communications Act. The E-Rate Program does not provide funding for all types of advanced telecommunications and information services. Instead, over time, the Commission has evaluated whether and under what conditions providing funding for various types of advanced telecommunications and information services would be both cost-effective and further the policy goals of the program. For example, when the Commission chose to make school and library self-provisioned networks eligible in 2014, it did so subject to strict competitive bid requirements and cost-effectiveness safeguards to ensure that E-Rate funds are only spent on a self-provisioned network when it is demonstrated to be the most cost-effective option.

30. Here, where the Commission is primarily relying on local, state, and Tribal procurement requirements and striving to provide a simple application review process, where it is possible to purchase broadband internet access services, the Commission thinks that is the most prudent path for meeting the goals of the Emergency Connectivity Fund Program of quickly getting connectivity to students, school staff, and library patrons. Moreover, in the Commission's experience with the E-Rate Program and as supported by the record, planning and executing self-provisioned networks is complex and time-consuming. Although there are narrow instances where constructing a

new network is speedy and reasonable, and therefore we provide one limited exception, the Commission is not persuaded that on the whole, network construction is consistent with or appropriate given the goals of the Emergency Connectivity Fund Program to quickly fund schools and libraries during the pandemic or consistent with the statute and section 254(h)(2)(A)'s direction that the Commission create rules to enhance economically reasonable access to support advanced telecommunications and information services. This is a short-term program, designed to give students, school staff, and library patrons access to devices and connectivity that is needed now for remote learning during the COVID-19 emergency period. Therefore, the Commission believes Congress intended it to provide funding for a narrower set of commercially available internet access services, and doing so provides a path to offering fast and simple application and reimbursement processes for desperately needed equipment and services.

31. The Commission recognizes that some schools and libraries have taken extraordinary steps to connect their students and patrons since the start of the pandemic and applaud their commitment to connect their students, school staff, and library patrons. But, by excluding support for potentially costly construction or self-provisioning projects, the Commission is able to satisfy the Congressional goals and swiftly act to provide much-needed support to more schools and libraries throughout the country. The Commission thus finds that providing support for such network construction in areas with commercially available options would be inconsistent with the emergency purposes of the Emergency Connectivity Fund and better addressed through other Commission Universal Service Fund Programs or broadband efforts that have established competitive bidding and cost-effectiveness safeguards. Adding all such program safeguards for areas with commercially available connectivity would be administratively burdensome and contrary to the goal to quickly provide access to equipment and connectivity to students, school staff, and library patrons during the pandemic.

32. Some stakeholders agree that excluding dark fiber and other network construction makes sense due to the nature of the emergency, but many seek flexibility and inclusion of additional equipment that may be used, to extend a school or library's existing E-Rate-supported broadband service to students' homes (largely, wirelessly) or

provision a separate network. The Commission disagrees that the language in section 7402 of the American Rescue Plan should be read to allow funding for additional, unenumerated equipment for network expansion and to use Emergency Connectivity Fund support for antennas, cell towers, Citizens Band Radio Service (CBRS), television white space (TVWS) base stations, or drone-powered internet, and other such wireless network equipment, except in the case outlined below. To the extent schools and libraries expanded their networks or built new networks to serve their students or library patrons over the last year, such equipment is ineligible for reimbursement through the Emergency Connectivity Fund Program, except for the portions of the network that fit into the enumerated list of eligible equipment (*i.e.*, Wi-Fi hotspots, modems, routers, or devices that combine a modem and router). Relatedly, the Commission is focusing in this document on implementation of section 7402 of the American Rescue Plan, and therefore, this Order does not address requests for action on a petition to allow schools and libraries to use their E-Rate-supported networks without cost-allocating out the off-campus use during the pandemic.

33. *Limited exception for network construction and/or datacasting where there is no commercially available internet access service option.* Despite this understanding of Congress' intent to speed funding to schools and libraries through commercially available broadband internet access service offerings, the Commission provides a limited exception to this finding. The record reflects the fact that in some instances there is simply no commercially available internet access service for purchase available to reach students, school staff, and library patrons in their homes. In only those limited instances, network construction (including construction of wireless networks) is the only way to quickly bring internet connectivity to these students, school staff, and library patrons, and the Commission believes that the "purchase" of equipment necessary to make advanced telecommunications and information services functional is consistent with Congress' intent to provide emergency connectivity to students, school staff, and library patrons that do not have any other internet access options. The record also demonstrates that where commercially available internet access services are not available datacasting can help meet students' remote learning needs by providing them with access to

educational content outside of school. Therefore, where there are no such commercially available broadband internet access services available, the Commission will allow schools and libraries to seek Emergency Connectivity Fund Program support to construct or self-provision networks to connect students, school staff, and library patrons during the COVID-19 emergency period who would otherwise not be connected to the internet, and the Commission will not require schools and libraries to engage in competitive bidding. Under those same circumstances the Commission will also allow schools and libraries to seek support for the customer premises equipment needed to receive access to educational content through datacasting. Some schools are already using datacasting and others may have already constructed wireless networks where there were no commercially available options and cannot go back and conduct competitive bidding. The Commission also considered requiring competitive bidding for applicants in areas with no commercially available options, but the timing does not work in light of the COVID-19 emergency and upcoming school year.

34. To reduce the risk of using emergency funding on time-consuming infrastructure construction projects better suited for funding from other programs, applicants seeking support for network construction, including self-provisioned networks, and those seeking support for customer premises equipment used to receive datacasting services, must therefore demonstrate that there were no commercially available internet access service options sufficient to support remote learning from one or a combination of providers. For networks already constructed or equipment already purchased during the pandemic, applicants must show that services were provided to students, school staff, or library patrons during the funding period supported by the second filing window. For future construction, they must show that construction is completed and services provided within one year of a funding commitment decision. Applicants seeking support for network construction or customer premises equipment used to receive datacasting services must define the geographic area that was or will be served and assess the estimated number of students and school staff, or library patrons to be served. Schools and libraries must be able to provide clear evidence demonstrating how they determined that an existing fixed or mobile

broadband network sufficient to support remote learning was or is not available and that for prospective network construction, that they sought service from existing providers serving the area prior to constructing a new network, and that such providers were unable or unwilling to provide services sufficient to meet the remote learning needs of their students, school staff, or library patrons. Additionally, when the Emergency Connectivity Fund Program support is sought for future construction, or for customer premises equipment used to receive datacasting services, applicants will be required to certify that they sought service from existing service providers in the relevant area and that such providers were unable or unwilling to provide broadband internet access services sufficient to meet the remote learning needs of their students, school staff or library patrons.

35. *Minimum Service Standards.* While the benefits to students, school staff, and library patrons of receiving high speed broadband services that include no data caps and low latency are well documented in the record, because of the current emergency and the lack of ubiquitous high speed broadband nationwide, the Commission declines to apply minimum service standards to covered services for the Emergency Connectivity Fund Program. As commenters recognize, to do otherwise would penalize schools, libraries, students, school staff, and library patrons in places where slower speed, data capped, and/or high latency services are currently the only affordable options. The Commission also recognizes that schools and libraries made purchases over the last year based on availability during the emergency, but without specific knowledge of whether such purchases might be eligible or ineligible for future support, such as from the Emergency Connectivity Fund. Moreover, as commenters argue, schools and libraries are in the best position to know what is available and sufficient for their remote learning needs. The Commission expects that schools and libraries will make the best decisions to meet the remote learning needs of their students, school staff, or library patrons. The Commission therefore finds that to qualify for funding as advanced telecommunications or information services purchased by schools and libraries for off-campus use by students, school staff, or library patrons, a service must include a fixed or mobile broadband connection that permits students, school staff, or library patrons

to use those connections for remote learning or library services. The approach the Commission takes in this document maximizes available choices during this emergency and thus speeds Emergency Connectivity Fund Program support to eligible schools and libraries making good faith efforts to facilitate remote learning throughout the pandemic.

36. *Installation, Taxes, and Fees.* The Commission agrees with commenters that the Emergency Connectivity Fund Program should also cover reasonable costs of the enumerated equipment, connected devices, and services, including installation, activation, and initial configuration costs, taxes, and fees. Such action is consistent with the E-Rate Program and most logically aligns with Congress' desire to cover the reimbursement of eligible equipment and services needed for remote learning without requiring a complicated cost allocation of items on participant invoices.

37. *Other Requests for Eligible Services and Equipment.* Commenters suggest many other types of equipment, services, or software be eligible for Emergency Connectivity Fund Program support including cybersecurity tools, learning management systems, private network services, online learning services that support online learning platforms, video conferencing equipment, and standalone microphones. The Commission does not dispute that schools and libraries need many of the identified products and services, but the Commission believes they are outside the scope of what Congress directed it to support through the Emergency Connectivity Fund. The Commission also denies Verizon's request to permit the use of Emergency Connectivity Fund Program support to fund Children's Internet Protection Act (CIPA) implementation costs. The Commission previously determined that E-Rate recipients are statutorily prohibited from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for CIPA compliance. The Commission finds that the use of Emergency Connectivity Fund Program support for implementing CIPA compliance is similarly statutorily barred.

38. While the Commission finds it imperative to focus the Emergency Connectivity Fund Program on the equipment and services specified by Congress, the Commission also seeks to avoid the challenging cost allocation application requirements needed in the E-Rate Program and therefore clarify

that any components purchased with the eligible equipment and necessary for the equipment to operate, such as cords and chargers, do not require cost allocation. These minimal costs do not warrant the expense or time of cost allocation in an emergency program designed to help students, school staff, and library patrons now. The Commission finds this will simplify applications and invoicing, which ultimately will speed funding to schools and libraries during this emergency. Consistent with the E-Rate Program, a manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component, but unbundled warranties are ineligible. To further assist applicants with determining eligible equipment and services for the Emergency Connectivity Fund Program, an eligible services list is included in the full version of this Report and Order.

39. Because the issue was raised in the record, the Commission also clarifies that, consistent with the E-Rate Program, schools and libraries may contract with any service provider or vendor willing to comply with the Emergency Connectivity Fund Program rules, not just eligible telecommunications carriers. The Commission also declines the suggestion of at least one commenter that the Commission excludes providers of broadband services that are not participating in the Emergency Broadband Benefit Program from providing eligible services in the Emergency Connectivity Fund Program. While hundreds of broadband providers are participating in the Emergency Broadband Benefit Program, some are not, and the Commission does not want to penalize schools or libraries for reasons beyond their control.

40. *National Security Supply Chain Restrictions.* Finally, the Commission reminds Emergency Connectivity Fund Program participants that, in accord with § 54.10 of the Commission's rules, participants are prohibited from using Federal subsidies to purchase, rent, lease, or otherwise obtain any covered communications equipment or service from a company identified as posing a national security threat to the integrity of communications networks or the communications supply chain. The Commission finds that this prohibition covers Emergency Connectivity Fund Program support, consistent with the determination that the prohibition applies to the Universal Service Fund Programs as providing funds for capital

expenditures necessary for the provision of advanced communications services. A list of covered equipment and services was posted on the Commission's website on March 12, 2021 and will be updated to reflect any future determinations.

D. Service Locations and Per-Location/Per-User Limitations

41. The American Rescue Plan requires the Commission to adopt regulations providing for the provision of support from the Emergency Connectivity Fund to an eligible school or library for the purchase of eligible equipment and/or services for use by students, school staff, and library patrons at locations that include locations other than the school or library. While the Act does not impose any explicit restrictions on the number of connections or connected devices supported by the Fund, it requires that reimbursements for eligible equipment “not exceed an amount that the Commission determines . . . is reasonable.” Moreover, Emergency Connectivity Fund Program support is provided under section 254(h)(2) of the Communications Act, which requires the Commission to consider what is technically feasible and economically reasonable when providing support for access to advanced telecommunications and information services for eligible schools and libraries. Mindful of the importance of maximizing the use of limited funds, the notification sought comment on whether the Commission should limit the locations where eligible equipment and services may be used or impose per-location or per-user limitations on eligible equipment and services. The notification also sought comment on the Commission's authority to impose such limitations, if any.

42. *Eligible Locations.* Recognizing that students, school staff, and library patrons are engaged in remote learning activities from a wide variety of off-campus locations that include, but are not limited to, their homes, the Commission declines to define or limit the specific off-campus locations where eligible equipment and services supported by the Emergency Connectivity Fund Program may be used during the COVID-19 emergency period. The Commission agrees with commenters that argue that limiting the off-campus locations where eligible equipment and services can be used would be inconsistent with the broad language in the Act. The Commission also agrees with those commenters that argue that schools and libraries are well positioned to determine where best to

connect their students, school staff, and library patrons.

43. The Commission expects that in most instances, the primary off-campus locations where students, school staff, and library patrons have been using eligible equipment and services is and—for the duration of the emergency period—will be their homes. At the same time, the record is clear that there are some students, school staff, and library patrons who cannot receive broadband service at home, or for other reasons need access at locations other than their homes. For example, emphasizing the rural nature of much of the Navajo Nation and the important role government “anchor institutions” play in Tribal life, the Navajo Nation Telecommunications Regulatory Commission stresses the need to permit the placement of eligible equipment, like Wi-Fi hotspots, wherever students are engaged in educational activities. Other commenters explain that restricting where students, school staff, and library patrons may use eligible equipment and services could leave the most disadvantaged populations, like the unhoused, unconnected, and urge the Commission not to impose restrictions on service locations that would exclude these populations. The Commission agrees.

44. The Commission therefore will permit eligible schools and libraries to seek and receive support for the purchase of eligible equipment and services for use by students, school staff, and library patrons at locations that include, but are not limited to, the homes of students, school staff, and library patrons; community centers; churches; and any other off-campus locations where they are engaged in remote learning activities. In so doing, the Commission seeks to provide flexibility to eligible schools and libraries to determine the service locations that best fit their needs without hampering their ability to undertake creative solutions for connecting students, school staff, and library patrons or disadvantaging certain vulnerable populations during this unprecedented time.

45. Notwithstanding this broad interpretation of the Act, and pursuant to its authority under section 7402(b) of the Act and section 254(h)(2)(A) of the Communications Act, the Commission prohibits schools and libraries from seeking and receiving reimbursement for eligible equipment and services purchased for use solely at the school or library. Some commenters suggest that the Act may permit funding for eligible equipment and services intended solely for on-campus use, pointing to the

language in section 7402(a) that eligible equipment and services be used at “locations that *include* locations other than the school” and “locations that *include* locations other than the library.” The Commission disagrees with this reading of the statutory text. The primary purpose of the Emergency Connectivity Fund is to support off-campus connectivity for students, school staff, and library patrons that are unable to benefit from existing connectivity at their schools or libraries because of the pandemic, an interpretation supported by the legislative history. The Commission construes the statute in light of that primary purpose, while not precluding the likely reality of the need for some use of the eligible equipment, and perhaps incidental use of mobile services at school and library “locations” as well, as long as the eligible equipment and services were purchased to provide off-campus access. The Commission also does not believe that providing Emergency Connectivity Fund support for equipment or services to be used solely on campus is reasonable or sound policy in light of the significant need for off-campus connectivity brought on by the pandemic and considering that the E-Rate Program already provides funding to meet students', school staff, and library patrons' on-campus connectivity needs. To permit limited funding from the Emergency Connectivity Fund Program to be used to support eligible equipment and services solely for on-campus uses would effectively allow schools and libraries to replace connections already funded through the E-Rate Program with funding from the Emergency Connectivity Fund and to use the Fund to purchase every device used on campus. The Commission does not believe Congress intended such a result.

46. In particular, the Commission recognizes the benefit of being able to use connected devices—laptops and tablets—funded through this Program at schools and libraries as schools and libraries begin to reopen, and the Commission is sensitive to the need to provide some flexibility during this uncertain time. If those connected devices were purchased for the purpose of providing students, school staff, and library patrons with devices for off-campus use consistent with the rules the Commission adopts in this document, the Commission will not prohibit such on-campus use. Fixed wireless and wireline connections purchased with funding from the Emergency Connectivity Fund may not,

however, be similarly used on-campus given that these connections are already eligible for funding under the E-Rate Program. While the Commission prohibits the use of funding to purchase eligible equipment and services used solely on campus, the Commission remains mindful of the importance of robust school and library networks, particularly in rural areas, for the provision of educational and library services across the nation. The Commission is committed to continuing to provide support for these networks through the E-Rate Program, and encourage schools and libraries participating in this new Program to continue to seek support for their on-campus connectivity needs through the E-Rate Program.

47. *Per-Location/Per-User Limitations.* To maximize the use of limited funds, the Commission imposes certain per-location and per-user limitations on applicants seeking support for eligible equipment and services under this Program. Specifically, the Commission will not permit an eligible school or library to apply for support for more than one fixed broadband internet access connection per location. Nor will the Commission provide support for eligible schools and libraries to purchase more than one connected device and more than one Wi-Fi hotspot per student, school staff member, or library patron during the COVID-19 emergency period.

48. Recognizing that Wi-Fi hotspots can be easily moved and used in different locations, while fixed broadband connections are delivered to a specific location, and pursuant to its authority under section 7402(b) of the Act and section 254(h)(2)(A) of the Communications Act, the Commission first limits support for those costs associated with fixed broadband services to one connection per location, but otherwise refrain from imposing a similar per-location limitation on Wi-Fi hotspots. The Commission agrees with those commenters that suggest that while a per-location limitation on fixed broadband services is reasonable, a similar limitation on Wi-Fi hotspots would be impractical since many of the Wi-Fi hotspots distributed by schools and libraries are insufficient for multiple users and many homes with multiple students, school staff, or library patrons could benefit from more than one Wi-Fi hotspot. For purposes of the per-location limitation the Commission imposes on fixed broadband services, the Commission will consider each unit in a multi-tenant environment (e.g., apartment buildings) a separate location.

49. Next, with the exception of fixed broadband connections, for which there is a one-per-location limit, the Commission prohibits schools and libraries from providing more than one supported connection and more than one connected device to a student, school staff member, or library patron and clarify that this limitation shall apply for the duration of the COVID-19 emergency period. That is, during the defined emergency period, the Commission will permit eligible schools and libraries to request and receive support for no more than one connection and no more than one connected device for each student, school staff member, or library patron they serve.

50. While commenters generally support this approach, some argue that there may be instances where more than one connected device or connection per user may be appropriate. These commenters do not, however, provide any specific examples where more than one connected device or connection is necessary; and, the one example offered in the record by the American Library Association, the Commission finds inapposite. Specifically, the American Library Association explains that in some cases a parent may request two connected devices from a library—one for use of the parent and the other for use of the child. Because the library in this instance is providing each device for use of one, individual user, the Commission considers such use consistent with the per-user limitation the Commission imposes on schools and libraries. As such, the Commission is not persuaded by those commenters that suggest that more than one connection or connected device per user is necessary, particularly in light of its obligation to limit reimbursements to amounts the Commission finds reasonable.

51. Nor is the Commission persuaded that limited funding should be used to allow schools and libraries to purchase additional connected devices or other equipment beyond the per-user limitation the Commission sets to account for equipment damage and breakage. The notification sought comment on “what allowances or controls may be necessary to allow schools and libraries to remediate such issues and how the Commission can prevent warehousing of unnecessary equipment and connected devices?” While the Commission agrees with commenters that it is a sensible practice for schools and libraries to purchase some percentage of extra devices in preparation for inevitable equipment breakage, the Commission finds that

limiting support for connected devices and Wi-Fi hotspots provided to students, school staff, and library patrons to no more than one of each such type of equipment per person is reasonable. Were the Emergency Connectivity Fund unlimited, the Commission would likely provide support for additional equipment. To do so under the present circumstances would, however, be inconsistent with the goal to provide students, school staff, and library patrons with as many needed devices and broadband services as possible in the near term and prevent unnecessary warehousing.

52. In adopting a per-user limitation on these connections and connected devices, the Commission seeks to equitably distribute and maximize the use of limited funds and the number of students, school staff, and library patrons served by this Program. To further ensure requests for support for connected devices are reasonable, in the case of a library, the Commission directs USAC to make inquiries if a library or library system seeks reimbursement for more devices than seems reasonable based on the size of the library or library system.

53. To ensure compliance with the per-location and per-user limitations the Commission imposes on schools and libraries, and to aid in preventing waste, fraud, and abuse, the Commission also requires schools and libraries to document the student(s), school staff member(s), and library patron(s) served at each location. Because the Commission expects that many schools and libraries are, in the normal course of business, already documenting this information, the Commission anticipates that imposing this requirement for purposes of participating in the Emergency Connectivity Fund Program will not be an additional burden on most applicants. Moreover, in requiring schools and libraries to collect and document this information as detailed below, the Commission acknowledges some comments expressing concerns about protecting the privacy of students and library patrons, as well as the confidentiality of library records, and asserting that imposing such a requirement on schools and libraries could discourage them from participating in the Program. The Commission is mindful of the need to safeguard the privacy of students, school staff, and library patrons, and the Commission commits to ensuring that, if the Commission or USAC staff needs to access this information, for example, for audit purposes, they will request and safeguard the information in accordance

with the applicable privacy laws and guidance. With this approach, the Commission seeks to balance the need to protect limited funds from waste, fraud, and abuse and the privacy of students, school staff, and library patrons.

54. *Wi-Fi Hotspots on School Buses and Bookmobiles.* Consistent with its decision above regarding eligible locations, the Commission allows schools and libraries to use Emergency Connectivity Fund Program support to purchase Wi-Fi hotspots for school buses and bookmobiles to provide off-campus broadband services to students, school staff, and library patrons who currently lack sufficient broadband access. The Commission finds ample support in the record for its action and agree with those commenters that assert that deploying Wi-Fi hotspots on schools buses or bookmobiles is a cost-effective means by which to provide much-needed connectivity to those students, school staff, and library patrons in areas with limited options. In addition, the Commission is aware that a number of schools and libraries have already undertaken initiatives to equip school buses and bookmobiles with Wi-Fi hotspots during the COVID-19 emergency period and have found such initiatives to be particularly effective. As such, during the second application window, schools and libraries will be able to seek support for these purchases if made during the relevant time period.

E. Eligible Uses

55. Consistent with the goal of funding the connections and devices needed for remote learning embodied in section 7402(a) of the American Rescue Plan and section 254(h)(1)(B) of the Communications Act, and with the E-Rate program, the Commission requires that equipment and services supported by the Emergency Connectivity Fund Program be used primarily for educational purposes. Although the text of section 7402 of the American Rescue Plan is silent on permitted uses of equipment and services eligible for Emergency Connectivity Fund support, that section of the Act is entitled “Funding for E-Rate Support for Emergency Educational Connections and Devices.” Moreover, it provides that the Commission promulgate rules for the provision of funding consistent with sections 254(h)(1)(B) and (2) of the Communications Act, and section 254(h)(1)(B) of the Communications Act requires telecommunications carriers to provide services to schools and libraries for “educational purposes.” As a result, the Commission’s E-Rate rules require schools and libraries to use E-Rate-

supported services “primarily for educational purposes.” Educational purposes, in turn, are defined as “activities that are integral, immediate, and proximate to the education of students” in the case of schools and activities that are “integral, immediate, and proximate to the provision of library services to library patrons” in the case of libraries. The Commission takes that same approach here.

56. For purposes of the Emergency Connectivity Fund Program, the Commission therefore defines “educational purposes” as activities that are integral, immediate, and proximate to the education of students in the case of a school, and activities that are integral, immediate, and proximate to the provision of library services to library patrons in the case of a library. And, the Commission requires schools and libraries to use eligible equipment and services supported by this Program primarily for educational purposes, but still limit use to students, school staff, and library patrons as intended by Congress. Because the Commission requires eligible equipment and services be used primarily for educational purposes, as defined in § 54.500 of its rules, in the case of schools, the Commission emphasizes that the provision of eligible equipment and services for school staff is limited to school staff that will be providing (or provided) educational services during the relevant time periods and would otherwise lack access to connected devices or broadband connections sufficient to facilitate remote learning during the pandemic.

57. The Commission recognizes that some commenters would prefer that schools and libraries be able to use eligible equipment and services for any purpose they see fit. At least one commenter suggests that the Commission adopts a presumption that all off-campus use of eligible equipment and services is an “educational use.” Others argue that the Commission should allow eligible equipment and services to be used for broader purposes without imposing any constraints or giving priority to educational uses, including for professional development and to support household connectivity that provides access to a variety of internet resources, not just educational or library resources or limited to the intended users specified in the Act. In requesting such expansive uses for eligible equipment and services, commenters ignore the fact that the Congressional reason for establishing the Emergency Connectivity Fund was to fund emergency educational connections and devices, as reflected in

the title of section 7402 of the American Rescue Plan, for use by students, school staff, and library patrons. What is more, such arguments, when taken to an extreme, are also an invitation to waste, fraud, and abuse.

58. At the same time, the Commission is sensitive to the critical need students, school staff, and library patrons have for broadband connections and devices for any number of important and productive uses during the COVID-19 pandemic, as well as the need to provide schools and libraries with as much flexibility as possible to meet the unique remote learning needs of students, school staff, and library patrons. The Commission also recognizes that even the most ardent student will not be using his or her connected device and broadband connection to attend classes and do schoolwork all day every day, and that library patrons use the broadband services at libraries for an enormous variety of purposes. The Commission therefore finds that it is only reasonable that schools and libraries be given the flexibility to allow the use of eligible equipment and services for other purposes when they are not needed for educational purposes in the first instance. The Commission concludes that requiring that eligible equipment and services supported by the Emergency Connectivity Fund Program be used primarily for educational purposes strikes the right balance. It will ensure that such equipment and services are first and foremost used to facilitate remote learning, as intended by Congress, while also allowing them to be used for other purposes for the benefit of students, school staff, and library patrons.

59. To ensure that connected devices supported by this Program are used primarily for educational purposes and by students, school staff, and library patrons, the Commission requires schools and libraries to restrict access to eligible connected devices to only those students, school staff, and library patrons with appropriate credentials. The Miami-Dade County Public Schools, in response to the question in the notification, confirms in its comments that it already requires appropriate credentials, and the Commission expects other schools and libraries are doing the same. The Commission thus finds that imposing such a restriction will not impose an additional burden on most applicants and is an important safeguard to ensure that connected devices supported by this Program are used for their intended purpose and by intended users. In addition requiring schools and libraries

to restrict access to the connected devices they provide for use by students, school staff, and library patrons helps protect the privacy of those users by limiting access to any information they have stored on such devices.

60. Recognizing that it may not always be technically possible to similarly restrict access for other eligible equipment and eligible services supported by this Program, the Commission encourages, but do not require, schools and libraries to take the same approach for the use of other eligible equipment and services. The Commission finds that restricting access in this way is a best practice and will help ensure that eligible services are provided to students, school staff, and library patrons, as provided for by the Act.

F. Reasonable Support Amount

61. The Commission next establishes a range of costs that are presumed reasonable for eligible connected devices and Wi-Fi hotspots and direct USAC to limit funding commitments for each type of equipment or device to the maximum amount deemed reasonable. The Commission also establishes an application review process for considering the reasonableness of other types of eligible equipment and services. In the E-Rate Program, competitive bidding and the requirement to use price as the primary factor help ensure cost-effective purchasing. As discussed in greater detail below, because the Commission is providing support for purchases made during the pandemic without requiring a competitive bidding process, those protections do not exist here. Moreover, schools and libraries purchased these equipment and services, often on short notice and during a time when demand was high for tablets, laptops, and Wi-Fi hotspots, and supply chains were disrupted leading some schools and libraries to pay premium prices for needed equipment. At the same time, the Commission is mindful that the Emergency Connectivity Fund, while substantial, is insufficient to meet the entire need of the nation's schools and libraries for eligible devices and services. Congress therefore directed the Commission to reimburse 100% of the costs associated with eligible equipment and services, "except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for reimbursement, is reasonable." Read in conjunction with

section 254(h)(2)(A) of the Communications Act's direction that services be "technically feasible and economically reasonable," the Commission adopts reasonable support amounts for connected devices and Wi-Fi hotspots and a framework to determine unreasonable costs for other eligible equipment and services supported under this Program.

62. For connected devices and Wi-Fi hotspots, the two types of eligible equipment for which the Commission expects to see the most requests for support through the Emergency Connectivity Fund Program, the Commission adopts per-device caps based on a reasonable support amount, up to which an applicant may receive support. Adopting these reasonable maximum support amounts will provide the simplest review process for applications requesting these two types of equipment, although applicants will be reimbursed based on the actual costs of the equipment. First, after consideration of the record, the Commission finds that \$400 is a reasonable, maximum support amount for connected devices. In response to the *Remote Learning Public Notification*, 86 FR 9309 (Feb. 12, 2021), commenters discussed costs of between \$160 and \$650, and just under \$300 for iPads. Here, stakeholders support a reimbursement limit between \$300 and \$750 per device to ensure that the Emergency Connectivity Fund is not used entirely to support a limited number of expensive connected devices and to allow the Program to support the much-needed connectivity for students, school staff, and library patrons. One commenter suggests that \$500 is more than sufficient to cover the most commonly used connected devices, while another representing states across the country determined that \$300 per device reflects a reasonable allowance based on knowledge of procurements over the last year. However, after consideration of the record, \$400 is a reasonable amount to reimburse for the vast majority of the devices suggested in the record, consistent with limits other programs have used. The Commission also elects a maximum support amount of \$400 in order to ensure funding is available equitably, does not unintentionally provide more support to schools and libraries that had greater access to funds, and increases the likelihood of available funds for those schools and libraries with continuing unmet needs. To be clear, applicants that spend more than \$400 per connected device may seek support of \$400 for each such device.

63. The Commission recognizes that in some instances \$400 may not be a reasonable maximum cost for a connected device that meets the needs of some people with disabilities. Applicants may request a waiver of the reasonable support amount for connected devices, if the reasonable cost to purchase devices for students, school staff, or patrons with disabilities is higher than \$400 and the public interest warrants deviation from the general rule. The Commission emphasizes that applicants seeking a waiver for this purpose should demonstrate that the additional cost associated with connected devices for those with disabilities is necessary to meet the needs of students, school staff, and library patrons with disabilities that would otherwise not be met with the purchase of a connected device at the \$400 reasonable support amount the Commission sets for the Program.

64. For Wi-Fi hotspots, the Commission adopts \$250 as a maximum reasonable cost for a Wi-Fi hotspot provided by a school or library to a student, school staff member, or library patron, based on advertised costs for Wi-Fi hotspots. Again, applicants that spend more than \$250 per Wi-Fi hotspot may seek \$250 in support for such devices. This maximum allowable cost is for the equipment itself, and the Commission expects applicants to separately seek support for the cost of the service provided using the hotspot device.

65. For the other types of eligible equipment—namely, modems, routers, and devices that combine modems and routers—the Commission does not at this time have a sufficient record to determine a reasonable maximum support amount, nor does the Commission expect to receive requests totaling a substantial amount of the Fund. The Commission therefore directs USAC to carefully review the requests and identify applications that are out of line with the funding requests of other applicants. The Commission delegates authority to the Bureau to provide guidance to USAC for assessing the reasonability of those applications based on the universe of requests for reimbursement for similar equipment and on applicants' justifications for their requests. The Commission recognizes that costs may be higher because of supply chain issues at the start of the pandemic, or geographic differences, and the Commission expects applicants to be prepared to explain their selections and costs, as needed, to be eligible for 100% reimbursement.

66. Consistent with this approach for eligible equipment and the requirements under section 254(h)(2)(A) that the Commission provide access to services to the extent technically feasible and economically reasonable, the Commission also directs USAC to review applications for commercially available advanced telecommunications and information services and identify the applications with outlying costs. The Commission delegates authority to the Bureau to provide guidance to USAC on how to determine the reasonableness of such costs. Based on the record, the Commission expects that most of the applications for support for broadband internet access services will be for services purchased under bulk purchase agreements, and the Commission expects services to generally be in the range suggested by commenters between \$10 and \$25 per month.

67. At the same time, the Commission recognizes that not all schools and libraries will be able to benefit from such bulk purchasing arrangements and pricing for broadband services varies widely across its nation based on the availability of competitive options, rurality, and other factors. In assessing the reasonableness of costs for broadband internet access services, particularly in rural locations, USAC and the Bureau should make use of the reasonable comparability benchmarks established for the High Cost Universal Service Support Program. The Bureau and the Office of Economics and Analytics publishes an updated reasonable comparability benchmark annually, including Alaska-specific benchmarks.

68. The Commission is mindful of the many valid concerns expressed in the record that there may be insufficient funding available for the Emergency Connectivity Fund Program to fully support the emergency connectivity and device needs of all eligible schools and libraries across the nation. In recognition of the concerns that reimbursement could be slow or uncertain, the Commission aims throughout this Report and Order to implement Program rules and processes that help applicants easily apply for funding and receive support as quickly as possible.

69. The Commission has carefully considered, but do not adopt here, the recommendation made by many commenters that instead of imposing reasonable maximum support amounts by type of eligible equipment and service, the Commission sets funding amounts for schools based on the number of students in a school, and for

libraries based on their square footage, with some adjustments for higher poverty or more rural applicants. This is the basic model used for determining the amount of funding provided to schools and libraries that apply for E-Rate support for internal connections (category two services).

70. The Commission agrees with commenters that budgets have been a successful approach to funding category two services. The commenters supporting a similar budget approach for apportioning the Emergency Connectivity Fund, however, fail to acknowledge that those category two budgets were adopted after a lengthy rulemaking and analysis of the costs of deploying internal connections within schools and libraries. While these category two budgets do not precisely meet the costs of each applicant, they were established with a goal of meeting every school and library's need for category two services over the course of a five-year budget cycle using available data on the costs and network needs and made permanent after careful examination of the budget amounts. Here, the Commission lacks sufficient data or estimates to make such determinations and instead find commenters' suggested budget levels to largely be focused on dividing the appropriated funds with slight differences to account for income or rurality. Had Congress wished to provide a set amount of funding to each school and library in the country, it could have easily done so. Instead, the American Rescue Plan clearly states that the Commission shall reimburse 100% of the costs associated with the eligible equipment and services, subject to a determination of what constitutes reasonable equipment costs, and suggestions that the Commission implement applicant budgets is simply inconsistent with this direction.

G. Application Process

71. The Commission adopts an application process that first provides funding to schools and libraries for purchases during the coming school year of eligible equipment and services for use by students, school staff, and library patrons who would otherwise lack access to eligible equipment or services sufficient to engage in remote learning and virtual library services. As discussed further below, during this first application window, applicants will be able to submit requests for funding for purchases made between July 1, 2021 and June 30, 2022, which aligns with the coming school year and the E-Rate funding year, with which schools and libraries are very familiar.

Then, if there are remaining funds after this initial application window, the Commission will open a second application window for schools and libraries to seek funding for eligible equipment and services they previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID-19 pandemic. During this second application window, applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services.

72. In adopting this approach, the Commission is particularly cognizant of the substantial remaining unmet need for connected devices and broadband internet access services among students, school staff, and library patrons. The Commission also recognizes that a significant amount of other Federal funding has been made available to schools to assist with digital learning (although schools have had the option to use that funding to meet a plethora of other pressing needs as well) through both the Coronavirus Aid, Relief, and Economic Security (CARES) Act last year, as well as other provisions of the American Rescue Plan Act. The approach the Commission takes in prioritizing existing unmet need, followed by a funding window providing support for previous purchases during the pandemic, is consistent with the suggestion made by those commenters who support prioritizing future purchases, as well as those who support allowing applicants to request support for both past and future purchases. Some other commenters support allowing requests only for purchases made after the date of this Order, others support prioritizing prior purchases, and still others support opening a single application window providing support for past and future purposes. The Commission recognizes that there is some merit to these other approaches. In particular, the Commission sees the appeal of using the Emergency Connectivity Fund Program to first reimburse those schools and libraries that have already paid for

eligible equipment and services to meet the needs of their students, school staff, and library patrons by prioritizing past purchases. On balance, however, the Commission finds that doing so would not be the best use of public funds because it would create a risk that the Commission would have insufficient funding available to provide support for connected devices and broadband internet access services for students, school staff, and library patrons who otherwise will not have access to devices and connectivity sufficient to meet their remote learning needs during the coming school year. Adopting a single funding window for past and future purchases creates the same risk, and imposes substantial administrative burdens on schools and libraries and on USAC.

73. As discussed above, section 7402(a) requires that the Commission promulgates rules for the provision of support under sections 254(h)(1)(B) and (h)(2) of the Communications Act. Section 254(h)(2) of the Communications Act, in turn, requires the Commission to consider what is technically feasible and economically reasonable when providing support for advanced telecommunications and information services. Given this statutory direction, as well as the limited funding available under the Emergency Connectivity Fund Program, the Commission therefore finds it reasonable to prioritize support to connect those students, school staff, and library patrons that would otherwise lack sufficient connectivity to benefit from remote learning this coming school year. In so doing, the Commission is also mindful of the purpose of the Fund and Congress' intent to address the connectivity needs of students, school staff, and library patrons who would otherwise be unable to access educational and library services due to the pandemic.

74. To ensure that funding is focused on unmet need, the Commission will require schools to certify, as part of their funding application, that they are only seeking support for eligible equipment provided to students and school staff who would otherwise lack access to connected devices sufficient to engage in remote learning. The Commission will also require schools to certify, as part of their funding application, that they are only seeking support for eligible services provided to students and school staff who would otherwise lack broadband services sufficient to engage in remote learning. This should not be an onerous burden, as the record shows that many school districts have conducted needs assessments to

determine the connectivity needs of their students and staff. The Commission thinks that schools are in the best position to determine whether their students and staff have devices and broadband services sufficient to meet their remote learning needs, and the Commission recognizes that they are making such decisions in the midst of a pandemic. The Commission, therefore, will not impose any specific metrics or process requirements on those determinations, but the Commission expects schools to take reasonable measures to determine need, avoid duplicating support provided by other programs such as the Emergency Broadband Benefit Program, and document need to the extent they do not already do so.

75. The Commission recognizes that libraries do not usually inquire about the needs of their patrons before providing services. They do, however, typically have acceptable use policies governing patron use of library computers and Wi-Fi hotspots. To ensure that libraries are providing eligible equipment and services to patrons with unmet needs, the Commission therefore requires that on a going forward basis before providing a library patron with eligible equipment or services, for which the library is seeking Emergency Connectivity Fund support, the library must provide the patron a copy of an eligible use policy, which explains that the equipment or service is intended for library patrons who do not otherwise have access to equipment or services sufficient to meet the patron's educational needs. On a going forward basis, the Commission also requires that the library patron sign and return a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library.

76. *Initial Emergency Connectivity Fund Program Application Filing Window.* To speed the availability of funds to schools and libraries during the public health emergency, the Commission directs USAC to open an initial 45-day Emergency Connectivity Fund Program filing window as soon as practicable. During this initial Emergency Connectivity Fund Program filing window, eligible schools and libraries may apply for funding for the purchase of eligible equipment and services made between July 1, 2021 and June 30, 2022 and provided during that time period to students, school staff and library patrons who still lack access to adequate connected devices, other eligible equipment or eligible services.

The Commission includes within this first window, only eligible equipment ordered by and received, as well as only services delivered by June 30, 2022.

77. The Commission finds that a 45-day application window will provide sufficient time for schools and libraries to apply for reimbursement. The Commission considered the suggestion of some commenters that a 30-day application filing window would be sufficient, but the Commission is mindful that this is a new program, the application window will be open during the summer, and school staff have much to do to get schools ready for the upcoming school year. The Commission also considered suggestions that the filing window be longer, but this is an "emergency" program. Closing the window after 45 days will allow USAC to quickly size demand, review applications, and release funding commitment decision letters—ensuring that funding from the Emergency Connectivity Fund will begin to flow to eligible applicants within a short period of time.

78. *Additional Application Filing Windows.* If demand does not exceed available funds for the first application period and the Commission does not open a second prospective window, the Commission delegates authority to the Bureau to direct USAC to open additional application filing windows until the funds are exhausted or the emergency period ends, whichever is earlier. The Commission recognizes that there will be a point at which the administrative costs to applicants and USAC of opening an application process for a relatively small amount of remaining funds is not cost-effective and delegate authority to the Bureau, after consultation with the Office of the Managing Director and USAC, to determine when that point has been reached.

79. In setting a start date for purchases that are reimbursable through the Emergency Connectivity Fund Program in the second application filing window, the Commission agrees with commenters that urge the Commission to use March 1, 2020 as the starting date for the Emergency Connectivity Fund Program. Although January 27, 2020 is the date the Secretary of Health and Human Services retroactively determined that a public health emergency existed as a result of COVID-19 pursuant to section 319 of the Public Health Service Act, and section 7402 states that its regulations should provide for the provision of support for purchases "during a COVID-19 emergency period," the Commission views that language as giving it

discretion to determine the appropriate funding period for purchases made during the COVID-19 emergency period. While some commenters suggest using July 1, 2020 as a start date for eligibility for Emergency Connectivity Fund support for administrative ease, the Commission agrees with those commenters that argue that it will be fairer to applicants that acted quickly, once they became aware of the looming pandemic, to use March 1, 2020 as the starting date based on when schools began sending students home because of the pandemic. As the Remote Learning Coalition points out, every state in the nation began closing schools in March 2020. Given the statutory goal of meeting the need of students, school staff, and library patrons for connectivity during the pandemic, allowing reimbursement for purchases made beginning on the first day of the month when schools began to close because of the pandemic helps ensure that the Commission provides support that is tied to needs arising from the pandemic.

80. *Competitive Bidding Requirements.* The Commission allows eligible schools and libraries to seek reimbursement for the cost of eligible equipment and services purchased without having conducted a Commission-mandated competitive bidding process for purposes of the Emergency Connectivity Fund. Based on the record, the Commission concludes that it is appropriate in light of the emergency, rather than adopting an Emergency Connectivity Fund competitive bidding process, to require schools and libraries seeking funding from the Emergency Connectivity Fund to certify that they have complied with all applicable local, state, and Tribal procurement requirements with respect to *both* previous purchases and future purchases and contracts. This requires schools and libraries that are not subject to public procurement rules to follow their own procurement process and rules, such as those that may be included in a written charter.

81. For purchases that have already been made and contracts that have already been executed, it is impractical to attempt to impose Commission-specific competitive bidding or other contract restrictions on such purchases, and the Commission is also persuaded that compliance with local, state, and Tribal procurement requirements offer significant protections against waste, fraud and abuse. Schools and libraries have been asked to take incredible steps at great cost this year in order to facilitate remote learning and keep their communities connected, and they did so

without the knowledge of whether such expenses would be reimbursed. While such expenses will still be reviewed to ensure the costs were reasonable, the Commission is convinced that the Commission can rely on the local, state, and Tribal procurement requirements as a check on unreasonable spending. For purchases made after the date of this Report and Order, some stakeholders recommend a streamlined competitive bidding approaches, ranging from just minor modifications to the E-Rate competitive bidding rules to a shortened 14-day competitive bidding window. Given the emergency nature of this funding, as well as the ability of the Commission to review and reject the requests for unreasonable costs, the Commission is convinced that compliance with local, state, and Tribal procurement regulations will sufficiently safeguard the Program for future purchases and decline to adopt a streamlined competitive bidding process for the Emergency Connectivity Fund Program.

82. The Commission also clarifies that schools and libraries may seek support from the Emergency Connectivity Fund Program for the purchase of eligible services and equipment using existing bulk purchase programs or sponsored service agreements, so long as doing so is consistent with the relevant local, state and Tribal procurement regulations. Unlike the traditional E-Rate Program, which funds broadband connectivity to a single school or district of schools and therefore generally only funds service from the single most cost-effective service provider, the Emergency Connectivity Fund Program is aimed at connecting numerous students, school staff, and library patrons at their homes or other locations, and therefore a school district or library system appropriately may have agreements with multiple service providers to offer connectivity. At the same time, the Commission declines to adopt the suggestion made by at least one commenter that the Commission requires school districts to select multiple existing providers, or set requirements for solicitation, finding that flexibility is appropriate under the circumstances. The Commission also reminds applicants that only eligible schools and libraries may seek reimbursement for such costs, and therefore a non-profit organization or other entity that arranged for such bulk purchases is not eligible for reimbursement through the Emergency Connectivity Fund Program.

83. *Leveraging E-Rate Processes and Forms.* As commenters strongly support, the Commission directs USAC to

leverage the existing E-Rate application, *i.e.*, FCC Form 471 (Description of Services Ordered and Certification Form) and other E-Rate processes to the extent feasible for the Emergency Connectivity Fund Program. Schools and libraries are already familiar with these processes and will be able to apply more easily than if an entirely new system is developed using different forms and processes. The Commission also expects that leveraging E-Rate processes and forms will likely reduce administrative costs and delays in the Emergency Connectivity Fund Program and ensure that Emergency Connectivity Fund Program support is quickly released to schools and libraries.

84. *Prioritization.* In the event that demand exceeds available funds during any Emergency Connectivity Fund Program application filing window, the Commission will prioritize requests based on applicants' E-Rate Program discount rate for category one services, adjusted to provide a five percent bump up for rural schools and libraries. Those schools and libraries entitled to a higher discount will receive funding ahead of those entitled to a lower discount rate. In the event there is insufficient funding to meet the need at a particular discount rate, the Commission will prioritize within the discount rate based on the percentage of free and reduced lunch eligible students, consistent with the rules for the E-Rate Program. Commenters suggest using assorted variations on the E-Rate discount matrix or a set-aside to reflect need in rural or Tribal areas, or special education programs and services. Adjusting the discount matrix to increase the likelihood of rural schools and libraries receiving funding in the event that demand exceeds available funds, will provide a more equitable geographic distribution of available funds, particularly in light of the higher cost of residential broadband services in many rural areas and the extraordinary circumstances of the pandemic. The Commission declines suggestions that the Commission provides a prorated amount of funding to all applicants that apply for support, finding instead that prioritizing by the discount rates provides a better method to prioritize the needs of high poverty and rural schools and libraries. The Commission finds that the approach the Commission adopts in this document balances the goal of targeting funding to the students, school staff, and library patrons with the greatest need with the goal of maximizing administrative efficiency by adjusting existing E-Rate Program standards rather than creating whole

new processes just for the Emergency Connectivity Fund Program.

H. Invoicing and Reimbursement Process

85. As discussed above, one of the goals the Commission adopts for the Program is to efficiently and effectively administer funding, which will be measured in part by the speed and ease of the reimbursement process. Consistent with that goal, the Commission establishes a streamlined invoicing process for applicants and service providers to submit requests for reimbursement, leveraging existing E-Rate forms to reduce administrative burdens where possible, while providing effective safeguards against waste, fraud, and abuse.

86. *Submission of Reimbursement Requests.* As part of this streamlined process, the Commission allows applicants and service providers to submit requests for reimbursement. The Commission agrees with those commenters that explain allowing both applicant and service provider invoicing options is the most efficient and direct way to get much needed funding to eligible schools and libraries. The Commission sees no reason not to send the actual funds to the service provider where the applicant and service provider have both consented to that approach and the applicant can show that the contractual obligation exists. As part of the invoicing process, applicants and service providers must provide required certifications, along with any necessary documentation to support their requests. The Commission clarifies that applicants may use consultants and service providers to assist with the preparation of their reimbursement requests to the extent necessary, but any fees associated with such assistance are not eligible for funding under the Program.

87. In addition, the Commission is also sympathetic to concerns raised by commenters that applicants may not be able to cover the upfront costs associated with eligible equipment and services. The Commission therefore will allow applicants who have entered into contractual arrangements or are otherwise legally obligated to purchase eligible equipment and services from their service provider, to submit requests for reimbursement before they have paid for the requested equipment and services. Applicants must pay their service provider within 30 days after receipt of funds and will be required to certify compliance and provide verification of payment to the service provider.

88. Although the Commission allows applicants to request that their service providers submit invoices for payment from the Emergency Connectivity Fund, the Commission does not require service providers to accept that responsibility. At this juncture, the Commission expects that applicants and service providers may have already entered into contracts for much of the eligible equipment and services to be purchased in the coming school year, and service providers would not have entered into those contracts expecting to have responsibility for invoicing the Emergency Connectivity Fund Program. At the same time, if requested to do so by the school or library, some service providers may be willing to invoice the Federal Government rather than the school or library for payment. The Commission therefore concludes on balance that allowing both options for submission of Emergency Connectivity Fund Program reimbursement requests is an efficient and effective way to ensure that applicants are actually able to purchase the eligible equipment and services. For administrative simplicity, applicants must specify at the application stage whether the applicant or service provider will be doing the invoicing. If an applicant indicates that the service provider will be doing the invoicing, the applicant will have to submit evidence of the service provider's willingness to do so.

89. *Documentation.* To protect against waste, fraud, and abuse of the Fund, the Commission will require applicants and service providers to submit, along with their reimbursement requests, invoices detailing the items purchased. Invoices must support the amounts requested in the application form and reimbursement request. The Commission agrees with commenters that suggest submission of invoices with reimbursement requests is sufficient in most instances and will help expedite review of reimbursement requests and the disbursement of funds. While the Commission will not require applicants and service providers to submit other supporting documentation at the time they submit their reimbursement requests, as discussed further below and pursuant to its document retention requirements, all participants must certify receipt/delivery of eligible equipment and services and that only eligible equipment and services were invoiced, as well as retain and provide upon request by USAC, Commission staff, or any other authorized Federal entity with oversight authority over Federal financial assistance and/or the Federal response to the pandemic, all records

related to their reimbursement request (including, for example, contracts and asset inventories).

90. *Leveraging Existing E-Rate Invoicing Forms.* To further streamline the invoicing process and reduce burdens on applicants, the Commission directs USAC to leverage the existing E-Rate invoicing forms to the extent feasible for the Emergency Connectivity Fund Program. Because the Commission allows applicants and service providers to submit reimbursement requests, the Commission expects USAC to use, to the extent possible, the FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice (SPI) Form) for this purpose. As detailed below, the Commission will require participants to make certain certifications on the form to protect against waste, fraud, and abuse. By leveraging existing E-Rate forms, the Commission expects to save participants time needed to familiarize themselves with new forms and reduce administrative costs.

91. *Invoicing Deadline.* The notification sought comment on establishing a short window for schools and libraries to file invoices and reimbursement requests and sought comment on what the shortest possible invoice filing window would be that would not impose undue burden on applicants. In order to allow the Commission to de-obligate committed funds for use by other schools and libraries, the Commission directs USAC to start accepting requests for reimbursement within 15 days of the first wave of commitments in the first application filing window. The Commission permits applicants and service providers to submit reimbursement requests and invoices for prior and prospective purchases for 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of a previously denied or reduced funding commitment; or service delivery date, whichever is later. That is half the time provided in the E-Rate Program, but necessary to ensure that the Commission can identify unspent funds and make them available to other applicants as quickly as possible. Commenters agree that a shorter invoicing period is reasonable and recommend an invoicing window of between 60 and 90 days. The Commission finds that 60 days strikes the correct balance.

I. Payment Administration

92. While USAC will be administering the Emergency Connectivity Fund

Program as permitted under section 7402(c)(2)(A) of the American Rescue Plan, and pursuant to the terms of the Memorandum of Understanding between the Commission and USAC that authorizes the use of USAC for the administration of the Emergency Connectivity Fund Program, the Commission must authorize the payments from the Emergency Connectivity Fund prior to the disbursement of those funds by the United States Department of Treasury. In this Report and Order, the Commission provides guidance on steps participants must be prepared to take to ensure timely payment of reimbursement claims from the Fund, as well as processes used to ensure proper payment.

93. *FFC Red Light Rule.* To implement the requirements of the Debt Collection Improvement Act of 1996, the Commission established what is commonly referred to as the “red light rule.” Under the red light rule, the Commission will not take action on applications or other requests by an entity that is found to owe debts to the Commission until full payment or resolution of that debt. If the delinquent debt remains unpaid or other arrangements have not been made within 30 days of being notified of the debt, the Commission will dismiss any pending applications. If an Emergency Connectivity Fund participant is currently on red light, it will need to satisfy or make arrangements to satisfy any debts that it owes to the Commission before its application can be processed.

94. *System for Award Management (SAM) Registration.* All applicants that intend to participate and all service providers that elect to submit requests for reimbursement in the Emergency Connectivity Fund Program must also register with the System for Award Management (SAM). SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the Federal Government’s partners in support of Federal awards, grants, and electronic payment processes. Registration in the SAM provides the Commission with an authoritative source of information necessary to provide funding to applicants and to ensure accurate reporting pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014 (collectively, Transparency Act or FFATA/DATA Act). Only those applicants and service providers that are actively registered in

SAM will be able to receive reimbursement from the Emergency Connectivity Fund Program. Applicants and service providers that are already registered with SAM do not need to re-register with that system in order to receive payment from the Emergency Connectivity Fund Program. Applicants who are not already registered with SAM may still participate in the Emergency Connectivity Fund Program, apply for funding, and receive program commitments. However, active SAM registration is required for an applicant or service provider to receive a payment from the Emergency Connectivity Fund Program. To assist participants who are not registered with SAM, the Commission directs USAC to provide information and guidance to participants regarding the SAM registration process. Furthermore, Program recipients may be subject to further FFATA/DATA Act reporting requirements to the extent that awardees subaward the payments they receive from the Program, as defined by FFATA/DATA Act regulations. Recipients may be required to submit data on those subawards.

95. *Do Not Pay.* Pursuant to the requirements of the Payment Integrity Information Act of 2019, the Commission is required to ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds. To meet this requirement, the Commission and USAC will make full use of the Do Not Pay system administered by the U.S. Treasury’s Bureau of the Fiscal Service. If a check of the Do Not Pay system results in a finding that an Emergency Connectivity Fund Program applicant or service provider should not be paid, the Commission will not issue any funding commitments or issue disbursements. The Emergency Connectivity Fund Program participant is responsible for working with the relevant agency to correct its information in the Do Not Pay system before its Emergency Connectivity Fund Program application is processed and Program payments can be issued.

J. Designating USAC as the Administrator of the Emergency Connectivity Fund Program

96. Pursuant to the authority granted in section 7402(c)(2)(A) of the American Rescue Plan, and the terms of the Memorandum of Understanding between the Commission and USAC that authorizes the use of USAC for the administration of the Emergency

Connectivity Fund, the Commission designates USAC as the Administrator of the Emergency Connectivity Fund Program. The Commission will use USAC’s services to review and approve applications for funding, recommend funding commitments, issue funding commitment decision letters, review requests for reimbursement and invoices and recommend payment of funds, as well as other administration-related duties. Commenters that addressed the issue overwhelmingly support using USAC and its processes for the efficient and effective administration of the Emergency Connectivity Fund Program, and the Commission agrees that USAC’s experience administering the E-Rate Program and other Commission pandemic response programs makes USAC uniquely situated to be the administrator of the Emergency Connectivity Fund Program.

97. In designating USAC as Administrator of the Emergency Connectivity Fund Program, the Commission adopts the same requirements for USAC as are currently provided in § 54.702(c)–(d) of its rules governing USAC’s duties as Administrator of the Universal Service Support Programs. In so doing, among other things, the Commission prohibits USAC from making policy, interpreting unclear statutes or rules relied upon to implement and administer the Emergency Connectivity Fund Program, or interpreting the intent of Congress.

98. In its administration of the Program, the Commission also directs USAC to comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security standards and requirements, such as the Privacy Act, relevant provisions in the Federal Information Security Modernization Act of 2014, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

99. Universal Service Fund Program audits have been successful in helping participants become compliant with the Commission’s rules and in protecting the funds from waste, fraud, and abuse. The Commission therefore reminds Emergency Connectivity Fund Program participants including schools, libraries, consortia, and service providers, that similar to the E-Rate and other Universal Service Fund Programs, they shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund Program. If the Commission determines that USAC should administer program

audits for the Emergency Connectivity Fund Program, the Commission will direct USAC to perform such audits pursuant to the Commission and USAC's respective roles and responsibilities in the Memorandum of Understanding.

100. The Commission also provides a path for recourse to parties aggrieved by decisions issued by USAC. Specifically, the Commission adopts the appeals and waiver request rules that govern USAC's administration of the Universal Service Support Programs, including the E-Rate Program. The Commission finds these existing processes sufficient to provide a meaningful review of decisions issued by USAC and the Commission regarding the Emergency Connectivity Fund Program. However, the Commission makes one modification for the Emergency Connectivity Fund Program appeal and waiver rules and provide a 30-day timeframe to request the review of an action by USAC, or to request the review of a decision by USAC or a waiver of the Commission's rules. The Commission makes this change because this is a short-term emergency program and to help provide faster timeframes for issuing appeal and waiver decisions.

K. Children's Internet Protection Act

101. The Commission finds that the obligations of the Children's Internet Protection Act (CIPA), which apply to schools and libraries having computers with internet access that seek E-Rate funding for internet access, internet service, or internal connections under section 254(h)(1)(b) of the Communications Act also apply to schools and libraries making certain purchases through the Emergency Connectivity Fund Program. Specifically, the Commission concludes that CIPA applies to the use of school or library owned computers, including laptop and tablet computers, if the school or library accepts Emergency Connectivity Fund or E-Rate support for internet access or internet services, or E-Rate support for internal connections. The Commission also concludes that CIPA does not apply where schools or libraries have purchased advanced telecommunications and information services through the Emergency Connectivity Fund Program to be used only in conjunction with student-, school staff- or patron-owned computers. As explained below, these conclusions reflect the fact that section 7402(a) of the American Rescue Plan expressly provides that Emergency Connectivity Fund support is to be made available pursuant to section 254(h)(1)(B) and (2) of the Communications Act.

102. Congress enacted CIPA as part of the Consolidated Appropriations Act of 2001, amending section 254 of the Communications Act. CIPA requires a school or library "having" internet-connected computers and receiving E-Rate funding for internet access, internet service, or internal connections to comply with, and certify its compliance with, specific internet safety requirements for "its" computers, including the adoption and enforcement of an internet Safety Policy that includes the operation of a technology protection measure. Schools, but not libraries, must also provide education about appropriate online behavior including cyberbullying.

103. Many commenters support the applicability of CIPA requirements in the context of the Emergency Connectivity Fund Program, while others raised concerns regarding the potential challenges of implementing CIPA compliance on services and devices that are outside of the applicant's direct control. The Commission rejects the argument made by at least two commenters that CIPA does not apply to the Emergency Connectivity Fund Program because the American Rescue Plan does not explicitly cite to the CIPA provisions in section 254 of the Communications Act. Section 7402(a) of the American Rescue Plan requires that the Emergency Connectivity Fund is to be made available under section 254(h)(1)(B) and (2), and CIPA requirements apply to eligible entities having computers with internet access that seek funding for internet access, and internet service, and internal connections under the same provision, section 254(h)(1)(B). Therefore, as discussed further in this section, the Commission concludes that CIPA requirements extend to eligible entities having computers with internet access that seek support for internet access or internet service through the Emergency Connectivity Fund pursuant to section 254(h)(1)(B). Few commenters, however, analyzed whether CIPA's applicability might depend on which equipment and services a school or library purchases through the Emergency Connectivity Fund Program. And the Commission concludes that such an analysis is necessary, given the unique text and structure of CIPA.

104. *First*, the Commission concludes that CIPA applies to the use of any computers owned by a school or library, including those purchased with Emergency Connectivity Fund support if the school or library receives Emergency Connectivity Fund or E-Rate support for internet access or internet

services, or E-Rate support for internal connections. This is true even if the student or library patron does not use internet access services provided by the school or library. This conclusion follows from the statutory text: CIPA applies to a school or library "having" computers and requires the entity to certify compliance as to "its" computers. Both words indicate that CIPA is triggered by ownership of a device, not the location where the device is used or temporarily possessed. The Commission disagrees with the suggestion that CIPA applicability is narrowly limited to school- or library-owned computers within a school or library building. While the drafters of CIPA may have been primarily focused on computers within schools or libraries, that is because of the circumstances at the time, and the plain language of the statute is not so limited. It reaches the use of devices owned by schools and libraries, regardless of whether the device is used off-campus, including use of such devices by students in their homes.

105. *Second*, the Commission concludes that CIPA does *not* apply to the use of computers owned by a school or library including those laptop computers or tablet computers purchased with support from the Emergency Connectivity Fund Program, if the purchasing entity does not *also* receive Emergency Connectivity Fund or E-Rate discounted internet access or internet services, or E-Rate discounted internal connections—or network equipment for internet access, internet service, or internal connections. Here too, the Commission's conclusion follows from the plain text of the statute. CIPA prohibits a school or library from "receiv[ing] services at discount rates" unless it complies with CIPA. CIPA also makes clear that this prohibition does not apply to a school or library that receives discounted services "only for purposes other than the provision of internet access, internet service, or internal connections." The Commission has construed these provisions to mean that CIPA "applies [only] to entities receiving internet access, internet service, or internal connections" under section 254(h). Thus, there is no statutory basis for requiring CIPA compliance from a school or library that does not receive those services through E-Rate or the Emergency Connectivity Fund—even if it purchases laptop computers or tablet computers through the Emergency Connectivity Fund.

106. *Third and finally*, the Commission concludes that CIPA does not apply to the use of third-party

owned devices, even if the school or library receives Emergency Connectivity Fund or E-Rate support for internet access or internet services, or E-Rate support for internal connections. This interpretation flows from the statute. A school or library does not “hav[e]” student-, school staff- or patron-owned devices, nor would it make sense for a school or library to certify that those devices are “its” devices for purposes of CIPA compliance. Moreover, when read in conjunction with section 254(h)(5) and (6), section 254(l) is meant to apply only to a school’s or library’s computers—and not to the delivery of services for a student’s, school staff’s or library patron’s personal computer. Schools and libraries are free to decide whether to allow the use of third-party devices on their own networks or the broadband connections purchased for use by their students, school staff, and library patrons and to adopt measures to protect or limit the use of those connections by students, school staff or library patrons using their own devices to access those connections.

107. *CIPA Certifications.* In recognition of the long history of CIPA compliance in the E-Rate application process, the Commission finds that an Emergency Connectivity Fund applicant need not complete additional CIPA compliance certifications if it has already certified its CIPA compliance for E-Rate support for the relevant funding year (*i.e.*, has certified its compliance in an FCC Form 486 or FCC Form 479). To the extent an applicant for Emergency Connectivity Fund Program support has not already certified its CIPA compliance for E-Rate applications, these applicants will be required to certify either (1) that it is in compliance with CIPA requirements under section 254(h) and (l); (2) that it is undertaking the actions necessary to comply with CIPA requirements; or (3) if applicable, that the requirements of CIPA do not apply, because the applicant is not receiving discounted internet access, internet services, or internal connections. The Commission concludes that its approach will best ensure full accountability and compliance on the part of all schools and libraries, while minimizing administrative burdens and costs for applicants and the Commission. To streamline the application and reimbursement process, the CIPA certifications will be included on the FCC Form 471 that will be used for the Emergency Connectivity Fund Program and will not be on a separate FCC form.

L. Protections Against Waste, Fraud, and Abuse

108. The Commission takes seriously its obligation to be a careful steward of the Emergency Connectivity Fund, and to protect the Program from waste, fraud, and abuse. The Commission is committed to ensuring the integrity of the Emergency Connectivity Fund Program and will pursue instances of waste, fraud, or abuse under its own procedures and in cooperation with law enforcement agencies. The specific procedures identified below regarding asset inventory requirements, document retention requirements, the prohibition on gifts, certifications, audits, and treatment of eligible equipment are tools at the Commission’s disposal to protect the Emergency Connectivity Fund and to ensure the limited funding is used for its intended purposes to support and enable remote learning for students, school staff, and library patrons nationwide.

1. Device and Service Inventory Requirements

109. The Commission requires Emergency Connectivity Fund Program participants to maintain inventories of devices and services purchased with Program support. Commenters are very supportive of requiring Emergency Connectivity Fund Program participants to maintain device and service inventories, which are also required in the E-Rate Program. Requiring eligible entities to keep and maintain inventories for eligible equipment and services purchased through the Emergency Connectivity Fund Program ensures that schools and libraries know where the Emergency Connectivity Fund-supported equipment and services are located and that they are being used consistent with the same requirement in the E-Rate Program. The Commission is sympathetic to concerns expressed by some commenters that keeping track of equipment in the homes of students and library patrons is more difficult than maintaining an inventory list of equipment in a school or library. The Commission acknowledges the fact that some loss of equipment as a result of students, school staff, or library patrons breaking or losing the equipment or moving out of the area and not returning it, and other similar scenarios is to be expected and is not *per se* evidence of waste, fraud and abuse by the applicants. However, it is the obligation of schools and libraries to keep track of and document the devices and other equipment that they distribute, and that includes documenting information

about missing, lost, or damaged equipment.

110. For the Emergency Connectivity Fund Program, the asset inventory for devices provided to individuals, must include the following information: (a) Device type (*i.e.*, laptop, tablet, mobile hotspot, modem/router); (b) device make/model; (c) equipment serial number; (d) the name of the person to whom the device was provided; and (e) the dates the device was loaned out and returned to the school or library. The inventory for devices not provided to individual students, school staff, or library patrons, but used to provide service to multiple eligible users, for example, a Wi-Fi hotspot used to provide service on a school bus, must include the following information: (a) Device type (*i.e.*, laptop, tablet, mobile hotspot, modem/router); (b) device make/model; (c) equipment serial number; (d) the name of the school or library employee responsible for that device; and (e) the dates the device was in service.

111. The Commission further requires Emergency Connectivity Fund Program participants to maintain a record of services purchased with Emergency Connectivity Fund support. This record of services must include the following information: (a) Type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including: Upload and download speeds and monthly data cap; (c) the name(s) of the person(s) to whom the service was provided; and for fixed broadband service; (d) the service address, and (e) the installation date of service; And (f) the last date of service (as applicable). The inventory for service not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users must include the following information: (a) Type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including: Upload and download speeds and monthly data cap; and (c) the name of the school or library employee responsible for the service; (d) a description of the intended service area; and for fixed broadband service; (e) the service address; (f) the installation date of service, and (g) the last date of service (as applicable).

2. Document Retention Requirements

112. The Commission also adopts records retention rules for the Emergency Connectivity Fund Program. Specifically, the Commission requires Emergency Connectivity Fund Program

participants to retain records related to their participation in the Program sufficient to demonstrate compliance with all Program rules for at least 10 years from the last date of service or delivery of equipment. This 10-year document retention requirement is consistent with the document retention requirement in the E-Rate Program, and many commenters were supportive of conforming the document retention requirements of the two programs. Doing so allows E-Rate participants to rely on their existing retention policies and mitigates the confusion that different retention periods might create. Some commenters supported a shorter document retention period, explaining that the emergency nature of the Emergency Connectivity Fund Program makes the 10-year document retention period too long. The Commission finds some of the shorter suggested document retention periods of only one or two years inadequate to protect the integrity of the Fund—as they would not provide sufficient time to uncover and investigate instances of waste, fraud, and abuse. Although the Commission has adopted shorter document retention periods for both the Emergency Broadband Benefit Program and the COVID-19 Telehealth Program, the Commission notes that Emergency Connectivity Fund Program support may be available through September 30, 2030 and given the size of the fund, \$7.17 billion, a longer document retention period is reasonable for this Program. On balance, the Commission finds that a 10-year period is appropriate for the Emergency Connectivity Program, because it allows the Commission the ability to protect the integrity of the Emergency Connectivity Fund Program and is consistent with the document retention requirements for the E-Rate Program. Participants are further required to present this information upon request to the Commission or its delegates, including USAC, as well as to the Commission's Office of Inspector General.

3. Gift Rule

113. In balancing the longstanding goal of fair and open procurement of eligible equipment and services, with the efforts made to date by schools and libraries and service providers to meet remote learning needs during the pandemic, the Commission agrees with commenters that gift restrictions should apply to the Emergency Connectivity Fund Program. As AT&T explains, not applying the gift rule “could compromise fair and open procurement.” The Commission

recognizes that many schools and libraries may have taken advantage of free or discounted connections and devices offered by service providers over the course of the pandemic as a result of the waiver of the E-Rate gift rule granted by the Bureau last year. That waiver currently enables service providers to offer and provide, and schools and libraries to solicit and accept improved broadband connections or equipment for remote learning through June 30, 2021. Moreover, it is impractical to try to impose restrictions on activity that occurred before Congress established the Emergency Connectivity Fund.

114. Therefore, the Commission adopts gift restrictions for the Emergency Connectivity Fund Program that take into account that waiver. The gift restrictions the Commission adopts for the Program prohibit eligible schools and libraries receiving support through the Emergency Connectivity Fund Program, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards, from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the Emergency Connectivity Fund Program. Participating service providers are likewise prohibited from offering or providing any gift or other thing of value to eligible entities, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards.

115. In light of the extraordinary needs of schools and libraries to meet the remote learning needs of students, school staff, and library patrons during the pandemic, and the existing partial waiver of the gift rule in the E-Rate program, the Commission provides an exception in the Emergency Connectivity Fund Program gift rule that allows service providers to offer and provide, and applicants to solicit and accept, broadband connections, devices, networking equipment, or other things of value that are directly related to addressing the pandemic-related needs of students, school staff, and library patrons through June 30, 2022. The Commission provides this limited exception for the Emergency Connectivity Fund Program through the end of June 2022 with the hope that by the end of this coming school year, the pandemic-related needs of schools and libraries for broadband connections, devices and networking equipment will have, for the most part, been met. Should that not be the case, affected

parties will be able to seek a waiver of the gift rules, following the sunset of this exception. The Commission finds that this approach protects the integrity of the procurement of purchases through the Emergency Connectivity Fund Program without unnecessarily burdening applicants or hindering beneficial partnerships between participating service providers, schools, and libraries that support remote learning efforts during these unprecedented times.

4. Certifications

116. As an additional measure to safeguard the Emergency Connectivity Fund from waste, fraud, and abuse, the Commission requires participants to provide several certifications as part of the application and invoicing processes. The Commission has found, and participants largely agree, that the use of certifications are a key compliance mechanism to protect the limited funds from waste, fraud, and abuse. All certifications must be made subject to the provisions against false statements contained in the Communications Act and Title 18 of the United States Code.

117. *Compliance with Local, State, and Tribal Procurement Requirements Certification.* To streamline and promote an efficient application process without adopting competitive bidding requirements for the Emergency Connectivity Fund Program, applicants will be required to certify as part of the FCC Form 471 that they have complied with all applicable local, state, and Tribal procurement requirements for any equipment and services purchased, or that will be purchased, with Emergency Connectivity Fund Program support. Schools and libraries that are not subject to public procurement requirements must certify that they have complied with their own procurement processes and requirements, such as those included in a written charter. Complying with local, state, and Tribal procurement rules is an important safeguard to ensure that costs for eligible equipment and services are reasonable and cost-effective. If applicants are unable or unwilling to certify that they have complied with local, state, or Tribal procurement requirements, they will not receive support from the Emergency Connectivity Fund Program. The Commission recognizes this may cause hardship for certain schools and libraries, but given the importance of protecting the Emergency Connectivity Fund Program, the Commission must ensure applicants are compliant with local, state, or Tribal procurement requirements to receive commitments

and reimbursements through the Program.

118. *Duplicate Funding Certification.* To avoid duplicative funding, protect against waste, fraud, and abuse, and to stretch the limited support available through the Emergency Connectivity Fund Program, the Commission will not provide support from the Fund for eligible equipment and services that have already been reimbursed through other Federal pandemic relief programs (e.g., CARES Act, Emergency Broadband Benefit Program, or other provisions of the American Rescue Plan); state programs specifically targeted to providing funding for eligible equipment and services; other external sources of funding or gifts specifically targeted to providing funding for eligible equipment and services. For example, if a student's household is receiving support from the Emergency Broadband Benefit Program for broadband internet access connectivity, the student would not be eligible for broadband connectivity under the Emergency Connectivity Fund Program. Commenters are supportive of adopting this limitation to stretch the limited funds.

119. However, the Commission also agrees with commenters that argue schools and libraries should be able to request reimbursement for a portion of the costs of eligible equipment and services if they received funding from another source for only a portion of the costs of that equipment or services. For example, the California Public Utilities Commission (CPUC) explains that it established the California Teleconnect Fund Distance Learning Discount in March 2020 to provide a 50% discount on monthly recurring charges for mobile data services (hotspots) to qualifying K–12 schools, libraries, and other community-based organizations. The Commission agrees that the schools and libraries that received 50% discounts through this Program should still be able to seek reimbursement through the Emergency Connectivity Fund Program for the portion of the costs that were not covered by the CPUC's program. The Commission therefore makes clear that schools and libraries may request and receive reimbursement for the portion of the costs of eligible equipment and services that were not covered through other sources of funding.

120. The Commission agrees, to an extent, with commenters that argue that if applicants were able to pay for eligible equipment and services through a financial gift or donation, that they should be allowed to also seek reimbursement through the Emergency Connectivity Fund in some situations. If

the donor specified that the gift was to be used for the type of equipment or services at issue, the applicant cannot seek to use the Emergency Connectivity Fund Program as a second source of funding for the same equipment or service. But, if the school or library simply used general funds it had available to it as the result of gifts or donations, it can seek reimbursement of the cost of the equipment or services from the Emergency Connectivity Fund Program.

121. To implement this prohibition on requesting or receiving duplicative funding, the Commission will require applicants to certify, on the application for funding and on the invoicing form that they are not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed with other Federal pandemic-relief funding (e.g., CARES Act, Emergency Broadband Benefit Program, Emergency Connectivity Fund Program); targeted state funding; other external sources of targeted funding or targeted gifts; or eligible for discounts through the schools and libraries universal service support mechanism or other universal service support mechanisms. The Commission takes this action to ensure that the limited Emergency Connectivity Fund Program support will be used for its intended purposes and if the eligible equipment and services were reimbursed through other Federal funds or other sources targeted for those purposes, the applicants should not be seeking funding through the Emergency Connectivity Fund Program.

122. *Non-Usage Certification.* In order to ensure that the Emergency Connectivity Fund Program makes the best use of limited funding, the notification sought comment on whether service providers providing monthly services reimbursed through the Emergency Connectivity Fund should be required to report and validate usage of the supported services. The notification also sought comment on whether, if there is non-usage during a service month, service providers should be required to notify the school or library regarding the non-usage, and to remove the cost for any non-used service from the invoice provided to the school or library for that service month. The notification further sought comment on whether service providers should also be required to certify that they have notified the school or library regarding any non-usage during a service month and have removed charges from such non-usage from the invoices submitted to the school or

library for payment. There was widespread agreement that such actions to address non-usage would be overly burdensome on both the service providers and the applicants.

123. Based on the record, the Commission finds that the better course will be to have applicants certify on requests for reimbursement (i.e., the invoicing form) that the equipment and services are being primarily used for educational purposes by students, school staff, or library patrons and both applicants and service providers are not willfully or knowingly requesting reimbursement for equipment or services that are not being used. Participants should take reasonable actions to monitor and track the usage of equipment and services that are purchased and reimbursed through the Emergency Connectivity Fund, for example, requiring their service providers to provide monthly reports or other information on data use. The Commission adopts these measures to ensure that the equipment and services purchased through the Emergency Connectivity Fund Program are being used for educational purposes and to prevent wasteful spending for unused services, and determine the certification requirement strikes a fair balance between the burdens on applicants and service providers to monitor non-usage and the need to protect the Emergency Connectivity Fund Program from wasteful non-usage.

124. *Additional Certification Requirements.* The Commission also requires participants when submitting requests for reimbursement (i.e., invoicing forms) to provide several additional certifications. Participants will also certify that they are seeking funding only for eligible equipment and services. In addition, consistent with the asset and service inventories and records retention requirements discussed above, participants will be required to certify that they maintain an asset inventory, an inventory of services provided, and data regarding fixed broadband services. Participants will also be required to certify that they will retain all program records for 10 years following the last date of service, as well as to their agreement to participate in audits and other post-commitment reviews as may be required.

5. Audits

125. As the Commission has for all the Universal Service Fund Programs, the Commission considers audits in the Emergency Connectivity Fund Program to be an important tool in ensuring compliance, and identifying instances of waste, fraud, and abuse. Every dollar

lost to waste, fraud, and abuse is funding that does not go to provide devices or connectivity to students, school staff, or library patrons. Not surprisingly, commenters are largely supportive of establishing audit procedures for the Emergency Connectivity Fund Program. To that end, the Commission delegates authority to the Office of the Managing Director to develop and implement an audit process for participants that complies with the requirements and procedures of the Emergency Connectivity Fund Program. The Office of the Managing Director may obtain the assistance of third parties, including but not limited to USAC, in carrying out this effort.

126. In developing audit requirements, the Office of the Managing Director should be mindful of the emergency nature of the pandemic and the intended use for eligible equipment and services purchased with Emergency Connectivity Fund Program support. Specifically, Emergency Connectivity Fund participants shall be subject to audits and other investigations to evaluate compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund, including what equipment and services may be purchased using support from the Emergency Connectivity Fund, and how the equipment and services may be used. Funding recipients are required to maintain documentation sufficient to demonstrate their compliance with program rules for ten years after the last date of delivery of services or connected devices supported through the Emergency Connectivity Fund Program. Upon request, Emergency Connectivity Fund Program participants must submit documents sufficient to demonstrate compliance with Program rules. Additionally, schools and libraries participating in the Emergency Connectivity Fund Program, may be subject to other audit processes including audits by the Office of Inspector General, and certain schools and libraries participating in the Emergency Connectivity Fund Program that meet the thresholds for being audited under the Single Audit Act are subject to a single audit that contains the FCC compliance supplement for the Emergency Connectivity Fund Program.

127. The Commission is also mindful of the privacy concerns raised regarding providing personally identifiable information to USAC or Commission staff about the individual (*e.g.*, student, school staff member, or library patron) that is receiving and using the Emergency Connectivity Fund-

supported equipment and/or services. USAC and Commission staff will abide by all applicable Federal and state privacy laws. The Commission also directs USAC and Commission staff to take into account the importance of protecting the privacy of students, school staff and library patrons, to design requests for information from schools and libraries that minimize the need to produce information that might reveal personally identifiable information, and to work with auditors to accept anonymized or deidentified information in response to requests for information wherever possible. If anonymized or deidentified information regarding the students, school staff, and library patrons is not sufficient for auditors' or investigative purposes, the auditors or investigators may request that the school or library obtain consent of the parents or guardians, for students, and the consent of the school staff member or library patron to have access to this personally identifiable information or explore other legal options for obtaining personally identifiable information. In the event consent is not available, the Commission recognizes that the auditors may need to use other procedures or take different actions to determine if there is any evidence of waste, fraud or abuse in the Emergency Connectivity Fund Program.

6. Treatment of Eligible Equipment During and After the COVID-19 Emergency Period

128. In order to protect against waste, fraud, and abuse in the Emergency Connectivity Fund Program, and consistent with the current E-Rate rules, the Commission prohibits schools and libraries from selling, reselling, or transferring equipment funded through the Emergency Connectivity Fund Program in consideration of money for three (3) years after its purchase. The Commission concludes that eligible equipment purchased with Emergency Connectivity Fund Program support that has been in use for at least three years will be considered obsolete. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded. This approach is consistent with section 254(h)(3) of the Communications Act, which applies to the E-Rate Program, and the existing E-Rate Program rules, which prohibit sale, resale or transfer of E-Rate-supported equipment for five years. The Commission adopts this shorter three-year time frame for the Emergency Connectivity Fund, because the Commission agrees with commenters

that devices and other equipment loaned to students, school staff, and library patrons and installed off-campus will likely have a shorter average life cycle than equipment installed and maintained on school or library premises.

129. The Commission considers but reject suggestions that the Commission "should not prohibit the sale, resale, or transfer of the purchased equipment for anything of value despite the current E-Rate Program rules so long as any such proceed or value be employed for educational or library purposes." Congress has authorized the use of billions of dollars for purchase of specific types of equipment, and the Commission thinks permitting schools and libraries to trade in that equipment to fund other programs or services would be inconsistent with Congress' intent.

130. The Commission hopes and expects that the useful life of much of the eligible equipment purchased through the Emergency Connectivity Fund Program will extend beyond the COVID-19 emergency period, and that schools and libraries can continue to use the equipment as the pandemic recedes. At the same time, the Commission recognizes that needs may change over the next few years. To that end, commenters urge the Commission to provide schools and libraries the flexibility to determine how such equipment should be treated after the pandemic ends. The Commission agrees with commenters that argue that schools and libraries are in the best position to determine the best use of their equipment. The Commission therefore allows participating schools and libraries to use the equipment after the emergency period for such purposes as the school or library considers appropriate, provided that the equipment be used for educational purposes. The Commission finds this approach will provide schools and libraries the flexibility to account for the limited lifespan of eligible equipment, while simultaneously combating potential waste, fraud, and abuse.

M. Cost-Effectiveness Analysis

131. The American Rescue Plan requires the Commission to take action by May 10, 2021 to promulgate rules for the provision of support from the Emergency Connectivity Fund to schools and libraries for specified equipment and services. The Commission has no discretion to diverge from statutory direction and thus a conventional cost benefit analysis, which would seek to determine whether the costs of the

required actions exceed their benefits, is not directly called for. Instead, the Commission considers whether the actions the Commission takes in this document are the most cost-effective means to implement this legislation, recognizing that these actions are designed to mitigate a crisis and require swift action.

132. In that regard, because eligible schools and libraries are already very familiar with the E-Rate Program, by leveraging, to the extent feasible, existing E-Rate rules and processes to provide support from the Emergency Connectivity Fund Program, the Commission is adopting the most cost-effective means currently at its disposal for timely implementation of the legislative direction. Those rules have been developed through a series of careful, and iterative rulemaking proceedings, and are well understood. The alternative of devising new approaches would lengthen the process of implementation and, given that they would need to be developed quickly and without the degree of scrutiny usually applied, they would be prone to unintended consequences. Further, a new process would require the benefiting schools and libraries to deal with the unfamiliar, increasing the time and effort they would necessarily expend exactly when both those things come at a premium, and increasing the likelihood of error. The Commission also finds that limiting funding to schools which certify that they are using support from the Emergency Connectivity Fund Program to satisfy otherwise unmet needs for connectivity or for devices of students or staff make its actions more cost-effective than other alternatives.

N. Enforcement

133. The notification sought comment on imposing administrative forfeitures and other penalties on Emergency Connectivity Fund Program participants found to be in violation of the Program rules and requirements. The record supports the application of the Commission's existing enforcement powers, including imposing administrative forfeitures and other penalties on participating providers that violate the Program rules and requirements, to protect the integrity of the Emergency Connectivity Fund Program, thus the Commission concludes it is appropriate to use the Commission's existing, statutorily permitted enforcement powers for the Program. The Commission also finds it appropriate to apply the Commission's suspension and debarment rules currently applicable to the Universal

Service Fund Programs to the Emergency Connectivity Fund Program participants. The Commission will withhold Emergency Connectivity Fund Program support from participants found to be in violation of the Program rules, if appropriate, and will also seek to recoup improperly disbursed funds, in addition to appropriate enforcement penalties. The Commission thinks T-Mobile's concern that an "unduly strict approach to enforcement" could discourage participation in the Program and undermine the goals of the Program is misplaced. The rules the Commission adopts in this document are straightforward and consistent with the goals of the statute, and the Commission does not think a safe harbor to protect against good faith errors is warranted. Instead, the Commission finds that these enforcement mechanisms sufficiently balance the need for widespread participation in the Emergency Connectivity Fund Program with the importance of maintaining the Program's integrity and protecting the Program from waste, fraud, and abuse.

O. Delegations to the Bureau and the Office of Managing Director

134. The Commission delegates authority to the Bureau, in consultation with the Office of the Managing Director, to implement the decisions reached here. Those implementing decisions may include providing additional detail and specificity to the requirements of the Program to conform with the decisions in this Report and Order, thus ensuring the efficient functioning of this Program.

135. In addition, the Commission delegates financial oversight of this program to the Commission's Managing Director and direct the Office of the Managing Director to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. These duties fall within the Office of the Managing Director's current delegated authority to ensure that the Commission operates in accordance with Federal financial statutes and guidance. Such financial oversight must be consistent with the rules adopted in this Report and Order. The Office of the Managing Director performs this role with respect to USAC's administration of the Commission's Universal Service Programs, the COVID-19 Telehealth Program, and the Emergency Broadband Benefit Program, and the Commission anticipates that the Office of the Managing Director will leverage existing policies and procedures, to the extent practicable and consistent with the American Rescue Plan, to ensure the

efficient and effective management of the Emergency Connectivity Fund Program. Finally, the Commission provides that the Office of the Managing Director is required to consult with the Bureau on any policy matters affecting the Emergency Connectivity Fund Program, consistent with § 0.91(a) of the Commission's rules. The Office of the Managing Director, in coordination with the Bureau, may issue additional directions to USAC and Emergency Connectivity Fund Program participants in furtherance of the decisions reached here.

136. The Commission directs the Bureau, as well as the Commission's Consumer and Governmental Affairs Bureau (CGB), to conduct outreach to educate eligible schools and libraries about the Emergency Connectivity Fund Program, and to coordinate, as necessary, with Congressional offices, other Federal agencies, and state, local and Tribal governments. The Commission also directs USAC to develop and implement a communications strategy, under the oversight of the Bureau, in coordination with CGB, to provide training and information necessary for schools and libraries to successfully participate in the Emergency Connectivity Fund Program and provide support to students, school staff, and library patrons who lack adequate access to connected devices and broadband connections necessary for remote learning. At the suggestion of several stakeholder groups, the Commission also directs USAC to engage with external users for the testing of any new systems for the Emergency Connectivity Fund Program. Outreach, education, and engagement with eligible schools and libraries will be an important tool in ensuring the Emergency Connectivity Fund Program meets its goals of providing connected devices and broadband connections to students, school staff, and library patrons that otherwise would lack sufficient access and be unable to engage in remote learning and virtual library services.

137. The Commission recognizes that, once implementation of the Emergency Connectivity Fund Program begins, the Bureau or USAC may encounter unforeseen issues or problems with the administration of the Program that will need to be resolved. To promote maximum effectiveness and smooth administration of the Emergency Connectivity Fund Program, the Commission delegates this authority to Bureau staff to address and resolve such issues related to the administration of the Emergency Connectivity Fund Program provided that doing so is

consistent with the decisions the Commission reaches here in this document.

III. Procedural Matters

138. *Administrative Procedure Act Exception.* The Commission finds good cause exists for making the rules the Commission adopts in this document effective May 28, 2021. The Administrative Procedure Act (APA) provides that with a showing of “good cause,” an agency is permitted to make rules effective before 30 days after publication in the **Federal Register**. “In determining whether good cause exists, an agency should ‘balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.’” As a general matter, the Commission believes that the APA requirements are an essential component of its rulemaking process. In this case, however, because of the unprecedented nature of this pandemic and the need for immediate action, the Commission finds there is good cause to make the Program rules effective May 28, 2021. Waiting an additional 30 days to make this relief available “would undermine the public interest by delaying” Congress’ intent to quickly provide resources to eligible schools and libraries to provide the greatly needed connectivity and connected devices to enable students, school staff, and library patrons to fully engage in remote learning during the COVID-19 emergency period.

139. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a final regulatory flexibility analysis “whenever an agency promulgates a final rule under [5 U.S.C. 553], after being required by that section or any other law to publish a general notice of proposed rulemaking.” The Commission finds good cause that the notice and public procedure on the rule adopted herein are impracticable, unnecessary, or contrary to the public interest, and thus no final regulatory flexibility analysis is required.

140. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that the regulations implementing the Emergency Connectivity Fund Program are a “major rule” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission finds for good cause that notice and public procedure on the rules adopted

herein are impracticable, unnecessary, or contrary to the public interest, and therefore this Report and Order will become effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 808(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

141. *Paperwork Reduction Act.* This document contains new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521. It was submitted to the Office of Management and Budget (OMB) for review and emergency processing pursuant to section 3507(j) of the PRA, 44 U.S.C. 3507(j). On May 20, 2021, OMB has approved, for a period of six months, the information collection requirements contained in 47 CFR 54.1710(a)–(b), 54.1711(a)–(b), 54.1714, and 54.1715. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1286. The forgoing notice is required by the Paperwork Reduction of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507. The March 22, 2021 notification sought specific comment on how the Commission may reduce the information collection burden on small business concerns with fewer than 25 employees pursuant to 44 U.S.C. 3506(c)(4).

142. *Late-Filed Comments.* The Commission notes there were several comments filed in this proceeding after the April 5, 2021 comment deadline. In the interest of having as complete and accurate record as possible, and because the Commission would be free to consider the substance of those filings as part of the record in any event, the Commission will accept the late-filed comments and waive the requirements of 47 CFR 1.46(b), and have considered them in this Report and Order. This does not apply to late-filed comments that are prohibited under the Commission’s *ex parte* rules as modified in this proceeding by the Wireline Competition Bureau in a Public Notice dated April 30, 2021.

IV. Ordering Clauses

143. Accordingly, *it is ordered* that, pursuant to the authority contained in section 7402, Title VII of the American Rescue Plan Act, 2021, Public Law 117–

2, 135 Stat. 4, this Report and Order *is adopted and shall become effective* May 28, 2021.

144. *It is further ordered* that, pursuant to the authority contained in section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), and 5 U.S.C. 553(d), this Report and Order *shall become effective* May 28, 2021.

145. *It is further ordered*, that pursuant to the authority contained in section 7402, Title VII of the American Rescue Plan Act, 2021, Public Law 117–2, 135 Stat. 4, part 54 of the Commission’s rules, 47 CFR part 54, is *amended* as set forth below, and such rule amendments shall be effective May 28, 2021.

146. *It is further ordered* that the Commission *shall send* a copy of this Report and Order to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 54

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons set forth above, part 54 of title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority 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, and 1601–1609, unless otherwise noted.

■ 2. Add subpart Q to read as follows:

Subpart Q—Emergency Connectivity Fund

Sec.

54.1700 Terms and definitions.

54.1701 Eligible recipients.

54.1702 Emergency Connectivity Fund eligible equipment and services.

54.1703 Emergency Connectivity Fund competitive bidding requirements.

54.1704 Emergency Connectivity Fund gift restrictions.

54.1705 Emergency Connectivity Fund eligible uses.

54.1706 Emergency Connectivity Fund service locations.

54.1707 Emergency Connectivity Fund reasonable support amounts.

54.1708 Emergency Connectivity Fund cap and requests.

54.1709 Availability period of the Emergency Connectivity Fund.

- 54.1710 Emergency Connectivity Fund requests for funding.
- 54.1711 Emergency Connectivity Fund requests for reimbursement.
- 54.1712 Duplicate support.
- 54.1713 Treatment, resale, and transfer of equipment.
- 54.1714 Audits, inspections, and investigations.
- 54.1715 Records retention.
- 54.1716 Children's internet Protection Act certifications.
- 54.1717 Administrator of the Emergency Connectivity Fund.
- 54.1718 Appeal and waiver requests.

§ 54.1700 Terms and definitions.

(a) *Advanced telecommunications and information services.* “Advanced telecommunications and information services” are services, as such term is used in section 254(h) of the Communications Act, 47 U.S.C. 254(h).

(b) *Billed entity.* A “billed entity” is the entity that remits payment to service providers for equipment and services rendered to eligible schools and libraries.

(c) *Connected devices.* “Connected devices” are laptop computers or tablet computers that are capable of connecting to advanced telecommunications and information services. Connected devices do not include desktop computers or smartphones.

(d) *Consortium.* A “consortium” is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Emergency Connectivity Fund support that seeks funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

(e) *COVID-19 emergency period.* The “COVID-19 emergency period” has the meaning given the term in title VII, section 7402(d)(5), Public Law 117–2 (the American Rescue Plan Act).

(f) *Educational purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students in the case of a school, or integral, immediate, and proximate to the provision of library services to library patrons in the case of a library, qualify as “educational purposes.”

(g) *Elementary school.* An “elementary school” means an elementary school as defined in 20 U.S.C. 7801, a non-profit institutional

day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

(h) *Library.* A “library” includes:

- (1) A public library;
- (2) A public elementary school or secondary school library;
- (3) A Tribal library;
- (4) An academic library;
- (5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this paragraph (h).

(i) *Library consortium.* A “library consortium” is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of this subpart, references to library will also refer to library consortium.

(j) *National school lunch program.* The “national school lunch program” is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced-price lunches to economically-disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced-price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(k) *Secondary school.* A “secondary school” means a secondary school as defined in 20 U.S.C. 7801, a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

(l) *Wi-Fi.* “Wi-Fi” is a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11.

(m) *Wi-Fi hotspot.* A “Wi-Fi hotspot” is a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi.

§ 54.1701 Eligible recipients.

(a) *Schools.* (1) Only schools meeting the statutory definition of “elementary school” or “secondary school” as defined in § 54.1700, and not excluded under paragraph (a)(2) or (3) of this section shall be eligible for support under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for support under this subpart.

(3) Schools with endowments exceeding \$50,000,000 shall not be eligible for support under this subpart.

(b) *Libraries.* (1) Only libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act and not excluded under paragraph (b)(2) or (3) of this section shall be eligible for support under this subpart.

(2) A library's eligibility for Emergency Connectivity Fund support shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for support as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for support under this subpart.

(c) *Consortia.* For consortia, reimbursement through the Emergency Connectivity Fund shall apply only to the portion of eligible equipment and services purchased by eligible schools and libraries and used by students, school staff, or library patrons as provided for by this subpart.

§ 54.1702 Emergency Connectivity Fund eligible equipment and services.

(a) *Eligible equipment.* For the purposes of this subpart, the following shall be considered equipment eligible for Emergency Connectivity Fund support:

- (1) Wi-Fi hotspots;
- (2) Modems;
- (3) Routers;
- (4) Devices that combine a modem and a router; and
- (5) Connected devices.

(b) *Eligible services.* (1) For purposes of this subpart, except as provided in paragraph (b)(2) of this section, services eligible for Emergency Connectivity Fund support shall be commercially-available fixed or mobile broadband

internet access services, including those available for purchase by schools and libraries through bulk purchasing arrangements.

(2) For eligible entities unable to provide students, school staff, or library patrons commercially-available fixed or wireless broadband internet access services, services eligible for Emergency Connectivity Fund support shall include the reasonable costs of construction of new networks, including self-provisioned networks included in the Emergency Connectivity Fund eligible services list; and/or the reasonable costs of customer premises equipment to receive datacasting services.

§ 54.1703 Emergency Connectivity Fund competitive bidding requirements.

A school, library, or consortium seeking to participate in the Emergency Connectivity Fund must comply with all applicable state, local, or Tribal procurement requirements for all equipment and services supported by the Emergency Connectivity Fund.

§ 54.1704 Emergency Connectivity Fund gift restrictions.

(a) *Gift restrictions.* (1) Subject to paragraphs (a)(3) and (4) of this section, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Emergency Connectivity Fund Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided in this section. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this subpart, if the value of these items received by any individual does not exceed \$50 from any one service provider per funding year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (a)(2)(ii) of this section.

(2) For purposes of this paragraph (a):

(i) The terms “school, library, or consortium” include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or

independent contractors of such entities involved on behalf of such school, library, or consortium with the Emergency Connectivity Fund Program, including individuals who prepare, approve, sign or submit Emergency Connectivity Fund Program applications, or other forms related to the Emergency Connectivity Fund Program, or who prepare bids, communicate, or work with Emergency Connectivity Fund Program service providers, Emergency Connectivity Fund Program consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Emergency Connectivity Fund Program; and

(ii) The term “service provider” includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph (a) shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium; and

(iii) Are provided using only the donor’s personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to Emergency Connectivity Fund procurement activities or decisions and are not given by service providers to circumvent Emergency Connectivity Fund Program rules in this subpart.

(b) *COVID-19 pandemic exception.* Any service provider may offer and provide, and any applicant may solicit and accept, broadband connections, devices, networking equipment, or other things of value directly related to addressing remote learning needs of students, school staff, and library patrons due to the COVID-19 pandemic through June 30, 2022.

§ 54.1705 Emergency Connectivity Fund eligible uses.

Eligible equipment and services purchased with Emergency Connectivity Fund support must be used primarily for educational purposes, as defined in § 54.1700.

§ 54.1706 Emergency Connectivity Fund service locations.

(a)(1) Eligible schools and libraries can request and receive support for the purchase of eligible equipment and services for use by:

(i) In the case of a school, students and school staff at locations other than the school; and

(ii) In the case of a library, patrons of the library at locations other than the library.

(2) Service locations may include, but are not limited to, homes, community centers, churches, school buses, bookmobiles, and any other off-campus locations where students, school staff, and library patrons are engaged in remote learning activities.

(b) Eligible schools and libraries cannot request and receive support from the Emergency Connectivity Fund for the purchase of eligible equipment and services for use solely at the school or library during the COVID-19 emergency period. However, some use of eligible equipment, as defined in § 54.1700, and eligible mobile services, purchased for off-campus may be used at the school or library is permitted.

(c) Emergency Connectivity Fund support for eligible equipment and services is limited to no more than one fixed broadband internet access connection per location, and one connected device and one Wi-Fi hotspot device per student, school staff member, or library patron. For purposes of the per-location limitation imposed on fixed broadband internet access services in this paragraph (c), each unit in a multi-tenant environment is a separate location for purposes of this paragraph (c).

§ 54.1707 Emergency Connectivity Fund reasonable support amounts.

Except as provided elsewhere in this subpart, in providing support from the Emergency Connectivity Fund, the Commission shall reimburse 100% of the costs associated with the eligible equipment and/or services, except that any reimbursement of for the costs associated with any eligible equipment or service may not exceed a reasonable support amount as provided in paragraphs (a) and (b) of this section.

(a) Support amounts are limited up to \$400 for connected devices and up to \$250 for Wi-Fi hotspots.

(b) The Wireline Competition Bureau is delegated authority to provide guidance to the Administrator to assess the reasonableness of requests for other eligible equipment or services, including those identified by the Administrator as containing costs that are inconsistent with other requests.

§ 54.1708 Emergency Connectivity Fund cap and requests.

(a) *Cap.* (1) The Emergency Connectivity Fund shall have a cap of \$7,171,000,000.

(2) \$1,000,000 to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided through the Emergency Connectivity Fund.

(3) Not more than 2% of the cap, or approximately \$143,420,000, shall be used by the Commission and the Administrator for administration of the Emergency Connectivity Fund.

(b) *Requests.* The Administrator shall implement an initial filing window, covering funding for purchases made between July 1, 2021 and June 30, 2022 for eligible equipment and services provided to students, school staff, and library patrons who would otherwise

lack connected devices and/or broadband internet access services sufficient to engage in remote learning. All schools and libraries filing an application within that the initial filing period will have their applications treated as if they were simultaneously received. The initial filing period shall conclude after 45 days. If demand does not exceed available funds for the first filing window, the Wireline Competition Bureau will direct the Administrator to open a second application window for schools and libraries to seek funding for eligible equipment and services schools and libraries previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID-19 pandemic. During this second application window, applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window

appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services. If demand does not exceed available funds after the close of the second filing window, the Wireline Competition Bureau may direct the Administrator to open additional filing windows until the funds are exhausted or the emergency period ends, whichever is earlier.

(c) *Rules of distribution.* (1) When the filing window(s) described in paragraph (b) of this section closes, the Administrator shall calculate the total demand for support submitted by applicants during the filing window. If total demand exceeds the total support available, the Administrator shall allocate funds to these requests for support, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries category one discount matrix in § 54.505(c) adjusted to provide a five percent increase for rural schools and libraries, as shown in the following matrix.

TABLE 1 TO PARAGRAPH (c)(1)

% of students eligible for National School Lunch Program	Emergency connectivity fund prioritization matrix	
	Discount level	
	Urban	Rural
< 1	20	30
1–19	40	55
20–34	50	65
35–49	60	75
50–74	80	85
75–100	90	95

(2) Schools and libraries eligible for a 95 percent discount shall receive first priority for the funds. The Administrator shall next allocate funds toward the requests submitted by schools and libraries eligible for an 90 percent discount, then for a 85 percent discount, and shall continue committing funds in the same manner to the applicants at each descending discount level until there are no funds remaining. If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, the Administrator shall allocate funds at that discount level using the percentage of students eligible for the National School Lunch Program.

§ 54.1709 Availability period of the Emergency Connectivity Fund.

The Emergency Connectivity Fund was established by Congress in the United States Treasury through an appropriation of \$7.171 billion, to remain available until September 30, 2030.

§ 54.1710 Emergency Connectivity Fund requests for funding.

(a) *Filing of the FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive Emergency Connectivity Fund support for eligible equipment and services under this subpart shall submit a completed FCC Form 471 to the Administrator.

(1) The FCC Form 471 shall be signed by the person authorized to order

eligible services for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

(i) "I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this application has been examined and is true, accurate and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or

can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).”

(ii) “In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.”

(iii) “By signing this application, I certify that the information contained in this application is true, complete, and accurate, and the projected expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).”

(iv) The school meets the statutory definition of “elementary school” or “secondary school” as defined in § 54.1700, does not operate as for-profit businesses, and does not have endowments exceeding \$50 million.

(v) The library or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996, does not operate as for-profit businesses, and their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(vi) The school, library, or consortia listed on the FCC Form 471 application has complied with all applicable state, local, or Tribal local laws regarding procurement of services for which support is being sought.

(vii) The school or school consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to students and school staff who would otherwise lack connected devices and/or broadband services sufficient to engage in remote learning.

(viii) The library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to

library patrons who have signed and returned a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron’s educational needs if not for the use of the equipment or service being provided by the library.

(ix) The school, library, or consortia is not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed in full with other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanism.

(x) The applicant or the relevant student, school staff member, or library patron has received the equipment and services for which funding is sought.

(xi) The equipment and services the school, library, or consortium purchases using Emergency Connectivity Fund support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

(xii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.1715.

(xiii) The school, library, or consortium has complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.

(xiv) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce shall records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(xv) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(2) Applicants seeking support for new network construction or end-user equipment for datacasting services through the Emergency Connectivity Fund must also certify under penalty of perjury that they sought service from existing service providers in the relevant area and that such service providers were unable or unwilling to provide broadband internet access

services sufficient to meet the remote learning needs of their students, school staff, or library patrons.

(3) All information submitted as part of an FCC Form 471 application shall be treated as public and non-confidential by the Administrator.

(b) *Service substitution.* (1) A request by an applicant to substitute equipment or service for one identified on its FCC Form 471 must be in writing.

(2) The Administrator shall approve such written request where:

(i) The equipment or service has the same functionality; and

(ii) This substitution does not violate any contract provisions or state, local, or Tribal procurement law.

(3) In the event that an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. Reimbursement for substitutions shall only be provided after the Administrator has approved a written request for substitution.

(c) *Mixed eligibility equipment and services.* If equipment or service includes both ineligible and eligible components, the applicant must remove the cost of the ineligible components of the equipment or service from the request for funding submitted to the Administrator.

§ 54.1711 Emergency Connectivity Fund requests for reimbursement.

(a) *Submission of request for reimbursement (FCC Form 472 or FCC Form 474).* Emergency Connectivity Fund Program reimbursement for the costs associated with eligible equipment and/or services shall be provided directly to an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund Program upon submission and approval of a completed FCC Form 472 (Billed Entity Applicant Reimbursement Form) or a completed FCC Form 474 (Service Provider Invoice) to the Administrator.

(1) The FCC Form 472 shall be signed by the person authorized to submit requests for reimbursement for the eligible school, library, or consortium and shall include that person’s certification under penalty of perjury that:

(i) “I am authorized to submit this request for reimbursement on behalf of the above-named school, library or consortium and that based on information known to me or provided to me by employees responsible for the

data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).”

(ii) “In addition to the foregoing, the school, library or consortium is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.”

(iii) “By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).”

(iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements in this subpart and received by either the school, library, or consortium, or the students, school staff, or library patrons as appropriate.

(v) The portion of the costs eligible for reimbursement and not already paid for by another source was either paid for in full by the school, library, or consortium, or will be paid to the service provider within 30 days of receipt of funds.

(vi) The amount for which the school, library, or consortium is seeking reimbursement from the Emergency

Connectivity Fund consistent with the requirements set out in § 54.1707.

(vii) The school, library, or consortium is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full with other Federal pandemic relief funding (e.g., the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Emergency Broadband Benefit Program, or other provisions of the American Rescue Plan), targeted state funding, other external sources of targeted funding, or targeted gifts or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

(viii) The equipment and services the school, library, or consortium purchased using Emergency Connectivity Fund support will be used primarily for educational purposes as defined in § 54.1700 and that the authorized person is not willfully or knowingly requesting reimbursement for equipment or services that are not being used.

(ix) The equipment and services the school, library, or consortium purchased will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

(x) The school, library, or consortium recognizes that it may be subject to an audit, inspection or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(xi) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(xii) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered

communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(2) The FCC Form 474 shall be signed by the person authorized to submit requests for reimbursement for the service provider and shall include that person's certification under penalty of perjury that:

(i) “I am authorized to submit this request for reimbursement on behalf of the above-named service provider and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).”

(ii) “In addition to the foregoing, the service provider is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.”

(iii) “By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).”

(iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund

Program rules and requirements in this subpart and received by either the school, library, or consortium, or by students, school staff, or library patrons, as appropriate.

(v) The amount for which the service provider is seeking reimbursement from the Emergency Connectivity Fund is consistent with the requirements set forth in § 54.1707.

(vi) The service provider is not willfully or knowingly requesting reimbursement for services that are not being used.

(vii) The service provider is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services for which it has already been paid.

(viii) The service provider recognizes that it may be subject to an audit, inspection, or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(ix) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a-7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(x) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(b) *Required documentation.* Along with the submission of a completed FCC Form 472 or a completed FCC Form 474, an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund must submit invoices detailing the items purchased or ordered to the Administrator at the time the FCC Form 472 or FCC Form 474 is submitted. Applicants that seek payment from the Emergency

Connectivity Fund prior to paying their service provider(s) must also provide verification of payment to the service provider(s) within 30 days of receipt of funds.

(c) *Reimbursement and invoice processing.* The Administrator shall accept and review requests for reimbursement and invoices subject to the invoice filing deadlines provided in paragraph (d) of this section.

(d) *Invoice filing deadline.* Invoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.

§ 54.1712 Duplicate support.

Entities participating in the Emergency Connectivity Fund may not seek Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased with or reimbursed in full from other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

§ 54.1713 Treatment, resale, and transfer of equipment.

(a) *Prohibition on resale.* Eligible equipment and services purchased with Emergency Connectivity Fund support shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) *Disposal of obsolete equipment.* Eligible equipment purchased using Emergency Connectivity Fund support shall be considered obsolete if the equipment are at least three years old. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

§ 54.1714 Audits, inspections, and investigations.

(a) *Audits.* Schools, libraries, consortia, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements in this subpart for the Emergency Connectivity Fund, including those requirements pertaining to what equipment and services are purchased, what equipment and services are delivered, and how equipment and services are being used.

(b) *Inspections and investigations.* Schools, libraries, consortia, and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity to enter their premises to conduct inspections for compliance with the statutory and regulatory requirements in this subpart of the Emergency Connectivity Fund.

(c) *Production of records for audits, inspections, and investigations.* Where necessary for compliance with Federal or state privacy laws, Emergency Connectivity Fund participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries, and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

§ 54.1715 Records retention.

(a) *Equipment and service inventory requirements.* Schools, libraries, and consortia shall keep asset and service inventories as follows:

(1) For each connected device or other piece of equipment provided to an individual student, school staff member, or library patron, the asset inventory must identify:

(i) The device or equipment type (*i.e.* laptop, tablet, mobile hotspot, modem, router);

(ii) The device or equipment make/model;

(iii) The device or equipment serial number;

(iv) The full name of the person to whom the device or other piece of equipment was provided; and

(v) The dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.

(2) For each connected device or other piece of eligible equipment not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the asset inventory must contain:

(i) The device type or equipment type (*i.e.* laptop, tablet, mobile hotspot, modem, router);

(ii) The device or equipment make/model;

(iii) The device or equipment serial number;

(iv) The name of the school or library employee responsible for that device or equipment; and

(v) The dates the device or equipment was in service.

(3) For services provided to individual students, school staff, or library patrons, the service inventory must contain:

(i) The type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

(ii) The service plan details, including upload and download speeds and monthly data cap;

(iii) The full name of the person(s) to whom the service was provided;

(iv) The service address (for fixed broadband service only);

(v) The installation date of the service (for fixed broadband service only); and

(vi) The last date of service, as applicable (for fixed broadband service only).

(4) For services not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the service inventory must contain:

(i) The type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

(ii) The service plan details, including upload and download speeds and monthly data cap;

(iii) The name of the school or library employee responsible for the service;

(iv) A description of the intended service area;

(v) The service address (for fixed broadband service only);

(vi) The installation date of the service (for fixed broadband service only); and

(vii) The last date of service, as applicable (for fixed broadband service only).

(b) *Records retention.* All Emergency Connectivity Fund participants shall retain records related to their participation in the program sufficient to demonstrate compliance with all program rules in this subpart for at least ten (10) years from the last date of service or delivery of equipment.

(c) *Production of records.* All Emergency Connectivity Fund participants shall present such records upon request any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its

Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity. When requested by the Administrator or the Commission, schools, libraries, and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

§ 54.1716 Children's Internet Protection Act certifications.

(a) *Definitions*—(1) *School.* For the purposes of the certification requirements of this section, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

(2) *Library.* For the purposes of the certification requirements of this section, library means library, library board or authority responsible for administration of a library.

(3) *Billed entity.* Billed entity is defined in § 54.1700. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) *Connected devices.* Connected devices are defined in § 54.1700.

(b) *Who is required to make certifications?* (1) A school or library that receives support for internet access, internet service, or internal connections services under the Federal universal service support mechanism for schools and libraries, or internet access or internet service through the Emergency Connectivity Fund, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) A school or library that receives support for connected devices through the Emergency Connectivity Fund and uses internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or through the Emergency Connectivity Fund must make the certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(3) Schools and libraries that are not receiving support for internet access, internet service, or internal connections under the Federal universal service support mechanism for schools and libraries; internet access or internet service through the Emergency Connectivity Fund; or connected devices that do not use internet access

or internet service funded through the Federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund are not subject to the requirements in 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they are not receiving support for such services or that the connected devices do not use internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund.

(c) *Certifications required under 47 U.S.C. 254(h) and (l).* (1) An Emergency Connectivity Fund applicant need not complete additional Children's Internet Protection Act (CIPA) compliance certifications if the applicant has already certified its CIPA compliance for the relevant funding year (*i.e.*, has certified its compliance in an FCC Form 486 or FCC Form 479).

(2) Emergency Connectivity Fund applicants that have not already certified their CIPA compliance for an E-Rate application for the relevant funding year (*i.e.*, have not completed a FCC Form 486 or FCC Form 479), will be required to certify:

(i) That they are in compliance with CIPA requirements under sections 254(h) and (l);

(ii) That they are undertaking the actions necessary to comply with CIPA requirements as part of their request for support through the Emergency Connectivity Fund; or

(iii) If applicable, that the requirements of CIPA do not apply, because the applicant is not receiving support for internet access, internet service, or internal connections under the Federal universal service support mechanism for schools and libraries or internet access or internet service through the Emergency Connectivity Fund, or the connected devices do not use internet access or internet service funded through the Federal universal support mechanism for schools and libraries or the Emergency Connectivity Fund.

(d) *Failure to provide certifications*—(1) *Schools and libraries.* A school or library that knowingly fails to submit certifications as required by this section shall not be eligible for support through the Emergency Connectivity Fund until such certifications are submitted.

(2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire

consortium ineligible for support through the Emergency Connectivity Fund.

(3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for equipment and services under the Emergency Connectivity Fund because of failure to submit certifications required by this section may reestablish eligibility for support by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications—(1) Schools and libraries.* A school or library that knowingly fails to comply with the certifications required by this section must reimburse any funds and support received under the Emergency Connectivity Fund for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for support of consortium members who comply with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to comply with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for support through the Emergency Connectivity Fund for failure to comply with the certification requirements of this section and that has been directed to reimburse the program for support received during the period of noncompliance may reestablish compliance by complying with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for support through the Emergency Connectivity Fund.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section before the close of the relevant funding year.

§ 54.1717 Administrator of the Emergency Connectivity Fund.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the Emergency Connectivity Fund and shall be responsible for administering the Emergency Connectivity Fund.

(b) The Administrator shall be responsible for reviewing applications for funding, recommending funding commitments, issuing funding commitment decision letters, reviewing invoices and recommending payment of funds, as well as other administration-related duties.

(c) The Administrator may not make policy, interpret unclear provisions of statutes or rules, or interpret the intent of Congress. Where statutes or the Commission's rules in this subpart are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the Emergency Connectivity Fund.

(e) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools and libraries.

(f) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the Emergency Connectivity Fund.

(g) The administrator shall provide performance measurements pertaining to the Emergency Connectivity Fund as requested by the Commission by order or otherwise.

(h) The Commission shall have the authority to audit all entities reporting data to the Administrator regarding the Emergency Connectivity Fund. When the Commission, the Administrator, or any independent auditor hired by the Commission or the Administrator, conducts audits of the participants of the Emergency Connectivity Fund, such audits shall be conducted in accordance with generally accepted government auditing standards.

(i) The Commission shall establish procedures to verify support amounts provided by the Emergency Connectivity Fund and may suspend or delay support amounts if a party fails to provide adequate verification of the support amounts provided upon reasonable request from the Administrator.

(j) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information

generated by or resulting from its role in administering the support mechanisms, if its participation in administering the Emergency Connectivity Fund ends. If its participation in administering the Emergency Connectivity Fund ends, the Administrator shall be subject to close-out audits at the end of its term.

§ 54.1718 Appeal and waiver requests.

(a) *Parties permitted to seek review of Administrator decision.* (1) Any party aggrieved by an action taken by the Administrator must first seek review from the Administrator.

(2) Any party aggrieved by an action taken by the Administrator under paragraph (a)(1) of this section may seek review from the Federal Communications Commission as set forth in paragraph (b) of this section.

(3) Parties seeking waivers of the Commission's rules in this subpart shall seek relief directly from the Commission and need not first file an action for review from the Administrator under paragraph (a)(1) of this section.

(b) *Filing deadlines.* (1) An affected party requesting review of a decision by the Administrator pursuant to paragraph (a)(1) of this section shall file such a request within thirty (30) days from the date the Administrator issues a decision.

(2) An affected party requesting review by the Commission pursuant to paragraph (a)(2) of this section of a decision by the Administrator under paragraph (a)(1) of this section shall file such a request with the Commission within thirty (30) days from the date of the Administrator's decision. Further, any party seeking a waiver of the Commission's rules under paragraph (a)(3) of this section shall file a request for such waiver within thirty (30) days from the date of the Administrator's initial decision, or, if an appeal is filed under paragraph (a)(1) of this section, within thirty days from the date of the Administrator's decision resolving such an appeal.

(3) In all cases of requests for review filed under paragraphs (a)(1) through (3) of this section, the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

(4) Parties shall adhere to the time periods for filing oppositions and replies set forth in § 1.45 of this chapter.

(c) *General filing requirements.* (1) Except as otherwise provided in this section, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications

Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned "In the Matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference the applicable docket numbers.

(2) A request for review pursuant to paragraphs (a)(1) through (3) of this section shall contain:

(i) A statement setting forth the party's interest in the matter presented for review;

(ii) A full statement of relevant, material facts with supporting affidavits and documentation;

(iii) The question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; and

(iv) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(3) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(4) If a request for review filed pursuant to paragraphs (a)(1) through (3) of this section alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

(d) *Review by the Wireline Competition Bureau or the Commission.*

(1) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission.

(2) An affected party may seek review of a decision issued under delegated authority by the Wireline Competition Bureau pursuant to the rules set forth in part 1 of this chapter.

(e) *Standard of review.* (1) The Wireline Competition Bureau shall conduct *de novo* review of request for

review of decisions issued by the Administrator.

(2) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.

(f) *Emergency Connectivity Fund disbursements during pendency of a request for review and Administrator decision.* When a party has sought review of an Administrator decision under paragraphs (a)(1) through (3) of this section, the Commission shall not process a request for the reimbursement of eligible equipment and/or services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Commission may authorize disbursement of funds for any amount of support that is not the subject of an appeal.

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FEDERAL REGISTER

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Part V

The President

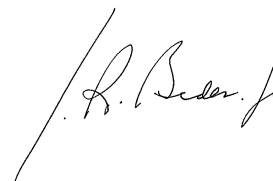
Proclamation 10217—Honoring the Victims of the Tragedy in San Jose, California

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Title 3—**Proclamation 10217 of May 26, 2021****The President****Honoring the Victims of the Tragedy in San Jose, California****By the President of the United States of America****A Proclamation**

As a mark of respect for the victims of the senseless acts of violence perpetrated on May 26, 2021, in San Jose, California, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, May 30, 2021. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



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