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Federal Register

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE-2020-BT-STD-0007]

RIN 1904-AE63

Energy Conservation Program: Energy Conservation Standards for Electric Motors

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

ACTION: Direct final rule; confirmation of effective and compliance dates.

SUMMARY: The U.S. Department of Energy (“DOE”) published a direct final rule to establish new and amended energy conservation standards for electric motors in the **Federal Register** on June 1, 2023. DOE has determined that the comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this document confirming the effective and compliance date of those standards.

DATES: The effective date of September 29, 2023, for the direct final rule published June 1, 2023 (88 FR 36066), is confirmed. Compliance with the new standards established in the direct final rule is required on and after June 1, 2027.

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

The docket web page can be found at www.regulations.gov/docket/EERE-2020-BT-STD-0007. The docket web

page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email:

ApplianceStandardsQuestions@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-3593. Email: Kristin.koernig@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

The Energy Policy and Conservation Act, Public Law 94-163, as amended (“EPCA”),¹ authorizes DOE to issue a direct final rule establishing an energy conservation standard for a covered equipment on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, that contains recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. (42 U.S.C. 6316(a); 42 U.S.C. 6295(p)(4))

The direct final rule must be published simultaneously with a notice of proposed rulemaking (“NPR”) that proposes an energy or water conservation standard that is identical to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C.

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

6295(p)(4)(A)–(B)) Not later than 120 days after issuance of the direct final rule, DOE shall withdraw the direct final rule if (1) DOE receives one or more adverse public comments relating to the direct final rule or any alternative joint recommendation; and (2) based on the rulemaking record relating to the direct final rule, DOE determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)) If DOE makes such a determination, DOE must proceed with the NOPR published simultaneously with the direct final rule and publish in the **Federal Register** the reasons why the direct final rule was withdrawn. (*Id.*)

After review of comments received, DOE has determined that it did receive adverse comments on the direct final rule. However, based on the rulemaking record, the comments did not provide a reasonable basis for withdrawing the direct final rule under the provisions in 42 U.S.C. 6295(p)(4)(C). As such, DOE did not withdraw this direct final rule and allowed it to become effective. Although not required under EPCA, DOE customarily publishes a summary of the comments received during the 110-day comment period and its responses to those comments. This document contains such a summary, as well as DOE’s responses, for electric motors.

II. Electric Motors Direct Final Rule

A. Background

In a final rule published on May 29, 2014, DOE prescribed the current energy conservation standards for electric motors manufactured on and after June 1, 2016 (“May 2014 Final Rule”). 79 FR 30934. These standards are set forth in DOE’s regulations at title 10 of the Code of Federal Regulations (“CFR”), § 431.25.

On May 21, 2020, DOE published an Early Assessment Review Request for Information, in which it stated that it was initiating an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for electric motors and sought information related to that effort. 85 FR 30878.

On March 2, 2022, DOE published the preliminary analysis for electric motors. 87 FR 11650 (“March 2022 Preliminary Analysis”). In conjunction with the March 2022 Preliminary Analysis, DOE published a technical support document (“TSD”) which presented the results of the in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine equipment price; (3) energy use; (4) life cycle cost (“LCC”) and payback period (“PBP”); and (5) national impacts (“March 2022 Prelim TSD”). The results presented included the current scope of electric motors regulated at 10 CFR 431.25, in addition to electric motors above 500 horsepower, air-over electric motors, and additional expanded scope electric motors.

On November 16, 2022, DOE received a joint recommendation for amended energy conservation standards for electric motors (“November 2022 Joint Recommendation”).² The November 2022 Joint Recommendation represented the motors industry, energy efficiency organizations, and utilities (collectively,

“the Electric Motors Working Group”).³ The November 2022 Joint Recommendation addressed energy conservation standards for medium electric motors that are 1–750 hp and polyphase, and air-over medium electric motors. On December 9, 2022, DOE received a supplemental letter to the November 2022 Joint Recommendation from the Electric Motors Working Group.⁴ The supplemental letter provided additional guidance on the recommended Super Premium/IE4 levels for open medium electric motors rated 100 hp to 250 hp, and a recommended compliance date for the November 2022 Joint Recommendation.

After carefully considering the November 2022 Joint Recommendation for amending energy conservation standards for electric motors submitted by the Electric Motors Working Group, DOE determined that these recommendations were in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule and published a direct final rule on June 1, 2023 (“June 2023

Direct Final Rule”). 88 FR 36066. DOE also evaluated whether the November 2022 Joint Recommendation satisfies 42 U.S.C. 6295(o), as applicable, and found that the recommended standard levels would result in significant energy savings and are technologically feasible and economically justified. 88 FR 36066, 36140–36144. Accordingly, the consensus-recommended efficiency levels for electric motors were adopted as the new and amended standard levels in the June 2023 Direct Final Rule. 88 FR 36066, 36144–36145.

These standards, which are expressed as nominal full-load efficiency values, apply to all equipment listed in Table II–1 through Table II–3 and manufactured in, or imported into, the United States starting on June 1, 2027. The June 2023 Direct Final Rule provides a detailed discussion of DOE’s analysis of the benefits and burdens of the new and amended standards pursuant to the criteria set forth in EPCA. 88 FR 36066, 36140–36144.

TABLE II–1—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....
550/410	95.8	96.2	96.2	96.2	.....	.....	.....	.....

² The Joint Recommendation is available in the docket for this rulemaking at www.regulations.gov/comment/EERE-2020-BT-STD-0007-0035.

³ The members of the Electric Motors Working Group included American Council for an Energy-Efficient Economy (“ACEEE”), Appliance Standards Awareness Project (“ASAP”), National Electrical

Manufacturers Association (“NEMA”), Natural Resources Defense Council (“NRDC”), Northwest Energy Efficiency Alliance (“NEEA”), Pacific Gas & Electric Company (“PG&E”), San Diego Gas & Electric (“SDG&E”), and Southern California Edison (“SCE”). DOE notes that in a separate letter, the New York State Energy Research and Development Authority (“NYSERDA”) expressed support for the

Joint Recommendations submitted to DOE on November 15, 2022; as well as in the supplemental letter submitted December 9, 2023. (NYSERDA, No. 36, at p.1)

⁴ The supplemental letter is available in the docket for this rulemaking at www.regulations.gov/comment/EERE-2020-BT-STD-0007-0036.

TABLE II-1—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS AND AIR-OVER ELECTRIC MOTORS) AT 60 HZ—Continued

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
600/447	95.8	96.2	96.2	96.2	.....	.....	.....	.....
650/485	95.8	96.2	96.2	96.2	.....	.....	.....	.....
700/522	95.8	96.2	96.2	96.2	.....	.....	.....	.....
750/559	95.8	96.2	96.2	96.2	.....	.....	.....	.....

TABLE II-2—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY STANDARD FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.0	94.5	96.2	96.2	95.8	95.8	94.5	95.0
125/90	95.4	94.5	96.2	96.2	95.8	95.8	95.0	95.0
150/110	95.4	94.5	96.2	96.2	96.2	95.8	95.0	95.0
200/150	95.8	95.4	96.5	96.2	96.2	95.8	95.4	95.0
250/186	96.2	95.4	96.5	96.2	96.2	96.2	95.4	95.4

TABLE II-3—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N, NE, NEY OR NY SPECIALIZED FRAME SIZE AIR-OVER ELECTRIC MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2 Pole		4 Pole		6 Pole		8 Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/75	74.0	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	.....	.....
15/11	90.2	89.5	91.0	91.0	.....	.....	.....	.....
20/15	90.2	90.2	91.0	91.0	.....	.....	.....	.....

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the June 2023 Direct Final Rule. 88 FR 35765 (June 1, 2023). DOE considered whether any adverse

comment received during the 110-day comment period following the publication of the June 2023 Direct Final Rule may have provided a reasonable basis for withdrawal of the

direct final rule under the provisions in 42 U.S.C. 6295(p)(4)(C).

III. Comments on the June 2023 Direct Final Rule

As discussed in section I of this document, not later than 120 days after publication of a direct final rule, DOE shall withdraw the direct final rule if (1) DOE receives one or more adverse

public comments relating to the direct final rule or any alternative joint recommendation; and (2) based on the rulemaking record relating to the direct final rule, DOE determines that such adverse public comments or alternative joint recommendation may provide a

reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)(i))

DOE received comments in response to the June 2023 Direct Final Rule from the interested parties listed in Table III.1.

TABLE III.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JUNE 2023 DIRECT FINAL RULE

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Air-conditioning, Heating, and Refrigeration Equipment	AHRI	54	Industry Original Equipment Manufacturer ("OEM") Trade Association.
Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE).	CA IOUs	51	Utilities.
Peter Faragasso	Faragasso	47	Individual.
Sean Hogan	Hogan	50	Individual.
Johnson Controls	JCI	53	OEM Manufacturer.
Richard Spotts	Spotts	52	Individual.
Michael Ravnitzky	Ravnitzky	49	Individual.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁵ The following sections discuss the substantive comments DOE received on the June 2023 Direct Final Rule as well as DOE's determination that the comments do not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

A. General Comments

In comments submitted in response to the June 2023 Direct Final Rule, the CA IOUs, Faragasso, Spotts, and Ravnitzky expressed support for the energy conservation standard levels specified in the June 2023 Direct Final Rule. (CA IOUs, No. 51 at p. 1; Faragasso, No. 47 at p. 1; Spotts, No. 52 at p. 1; Ravnitzky, No. 49 at p. 1) DOE has determined that these comments are supportive of the standards adopted in the June 2023 Direct Final Rule.

AHRI and JCI opposed the June 2023 Direct Final Rule. (AHRI, No. 54 at pp. 1–9; JCI, No. 53 at p. 1–2) Specifically, AHRI opposed the energy conservation standards for air-over electric motors. AHRI further requested that DOE withdraw the June 2023 Direct Final Rule to comply with EPCA's requirements based on the lack of interested persons that are fairly representative of the relevant point of

view and the receipt of their comments, which AHRI believes provides a reasonable basis for withdrawal. (AHRI, No. 54 at pp. 2–3, 7–8) However, as discussed in more details in the remainder of this document, DOE has determined that these comments do not provide a reasonable basis to withdraw the June 2023 Direct Final Rule.

Hogan did not support or oppose the rule and commented on inverter motors (Hogan, No. 50 at p. 1) and, as discussed in more details in the remainder of this document, DOE has determined that this comment is not adverse.

B. Stakeholder Representation

Under 42 U.S.C. 6295(p)(4), interested persons that are fairly representative of relevant points of view, as determined by DOE, may submit a joint recommendation to the Department for new or amended energy conservation standards. AHRI stated that EPCA defines those interested persons as representatives of manufacturers of covered products, States, and efficiency advocates. AHRI contends that the joint stakeholders that came together for the recommendation are not "fairly representative" of the relevant points of view required to publish a direct final rule according to EPCA's requirements in 42 U.S.C. 6295(p)(4)(A) because the list does not include manufacturers of covered products, nor any trade association that represent manufacturers of covered products. AHRI commented that, as a trade association representing manufacturers of covered products, its members should have been taken into consideration before the June 2023

Direct Final Rule was issued. (AHRI, No. 54 at pp. 7–8)

In response, DOE first notes that the direct final rule authority in 42 U.S.C. 6295(p)(4) applies to electric motors through the crosswalk provision at 42 U.S.C. 6316(a). As part of that crosswalk provision, any reference to a covered "product" is replaced with a reference to covered "equipment." (42 U.S.C. 6316(a)(3)) As a result, 42 U.S.C. 6295(p)(4) would read, in relevant part, "[o]n receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered equipment, States, and efficiency advocates), as determined by the Secretary . . ." (42 U.S.C. 6316(a)(3); 42 U.S.C. 6295(p)) The November 2022 Joint Recommendation includes a trade association, NEMA, which represents more than 23 manufacturers of electric motors. The November 2022 Joint Recommendation also includes energy-efficiency advocacy organizations and utilities. Additionally, DOE notes that one of the parties to the November 2022 Joint Recommendation, NEEA, is an alliance of utilities and partners that pools resources and shares risks to transform the market for energy efficiency to the benefit of all consumers in the Northwest and whose 20-member Board consists of representatives from the Bonneville Power Administration, consumer- and investor-owned electric and natural gas utilities, state government, and public interest and efficiency industry organizations. Finally, DOE also notes that NYSEERDA

⁵ The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for electric motors. (Docket No. EERE-2021-BT-STD-0035, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

expressed support for the Joint Agreement. As a result, DOE has determined that the November 2022 Joint Recommendation was submitted by interested persons who are fairly representative of relevant points of view on this matter.

C. Electric Motors Used as a Component of a Covered Product or Equipment

AHRI commented that component regulation imposes design constraints and limits innovation without guaranteeing energy savings because covered products are already regulated. AHRI stated that regardless of the efficiency of a given product's individual components, such products must ultimately meet an efficiency standard, and, therefore, little or no additional energy savings would be achieved. AHRI commented that component regulation would impose significant cost to manufacturers and consumers and the burden DOE would impose on manufacturers of covered products by expanding the scope of the electric motor test procedure, and ultimately standards, is not outweighed by any corresponding benefit to consumers or the nation. (AHRI, No. 54 at p. 2) AHRI added that DOE should apply a finished-product approach to energy efficiency regulations. Specifically, AHRI commented that it strongly opposes DOE's plan to expand the existing scope of coverage of electric motors to include air-over electric motors. AHRI added that embedded motor testing, and ultimately energy conservation standards, would save minimal, if any, energy and would create needless testing, paperwork, and record-keeping requirements that would raise costs for consumers. In addition, AHRI commented that the timing of the proposed changes would exacerbate supply chain disruption, further delaying products reaching U.S. consumers and inflating the cost of finished goods. AHRI commented also that component regulation imposes design constraints and limits innovation without guaranteeing energy savings and that covered products are already regulated. Further, AHRI asserted that OEMs already consider more efficient electric motors when identifying what design options to apply to meet new finished product standards. (AHRI, No. 54 at pp. 3, 8)

JCI commented that it remained opposed to DOE's revised definition and resulting scope expansion to mandate new test procedures to include special and definite purpose motors, which specifically includes air-over, inverter, synchronous motors as well as the newly defined category of "small non-

small electric motors" ("SNEMs") as such motors are already being regulated at the system level at 10 CFR 431.25 and for which there is a clear exemption as noted under 42 U.S.C. 6317(b)(3). JCI also stated its opposition to component level regulation for DOE covered products. JCI commented that "double regulation" of finished goods and the components embedded within the finished goods stifles innovation by reducing design engineers' ability to weigh trade-offs between different technologies. JCI asserted that, as a matter of practice, motors are typically not the least efficient component within an air-conditioner, heat pump, or associated furnace and by limiting the choices of system components, designers could be forced to forego greater total system benefits and add unnecessary cost due to the lack of design flexibility. JCI further commented that generic motor efficiency ratings will not result in significant savings benefits and will increase cost to consumers. JCI stated that consumers who purchase JCI equipment generally do not evaluate potential savings or performance features based on individual components (*i.e.*, motors) but rather on the overall system performance of the equipment. (JCI, No. 53 at pp. 1–2)

On the issue of energy savings resulting from regulating components, DOE received similar comments in response to the March 2022 Preliminary Analysis that were addressed in the June 2023 Direct Final Rule. Specifically, as highlighted in a previous DOE report, motor energy savings potential and opportunities for higher efficiency electric motors in commercial and residential equipment would result in overall energy savings.⁶ In addition, some manufacturers advertise electric motors as resulting in energy savings in HVAC equipment.⁷ 88 FR 36066, 36103. Therefore, DOE disagrees with the notion that an increase in motor efficiency would not necessarily result in improved efficiency of the equipment the motor is incorporated into. In addition, when establishing any new or amended energy conservation standards for other covered equipment or products incorporating electric motors, DOE analyzes the current market to establish

the baseline performance and would account for any improvements due to increased motor efficiency. As a result, any motor improvement would be later reflected in the covered equipment/product subsequent rulemakings. Therefore, DOE has determined that these comments do not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

Additionally, the June 2023 Direct Final Rule did not include inverter-only motors, synchronous motors, and SNEMs. Instead, the June 2023 Direct Final Rule retained the scope of the electric motors currently regulated at 10 CFR 431.25 and expanded the scope to electric motors that meet the same criteria as described at 10 CFR 431.25(g) but otherwise have a horsepower greater than 500 and less than or equal to 750 hp; and to those that otherwise have an air-over enclosure or a specialized frame size and an air-over enclosure. 88 FR 36066, 36079–36081. For these electric motors, the energy conservation standards adopted in the June 2023 Direct Final rule would preserve the technologies and frame sizes that exist today on the market (*i.e.*, AC induction polyphase designs in the same NEMA frame sizes). *Id.* at 88 FR 36097. Accordingly, DOE disagrees with the comments from AHRI and JCI that the adopted standards could limit innovation by imposing design constraints or reducing design engineers' ability to weigh trade-offs between different technologies.

Therefore, DOE has determined that these comments do not provide a reasonable basis for withdrawal of the June 2023 Direct Final.

D. Original Equipment Manufacturer Industry Burden

AHRI commented that DOE declined to address industry's concerns in the electric motor test procedure final rule, citing that DOE stated comments related to any potential standards that DOE may consider for electric motors will be discussed in the separate energy conservation standards rulemaking docket (EERE–2020–BT–STD–0007).⁸ AHRI noted that it had raised concerns specifically regarding air-over motors in response to the March 2022 Preliminary Analysis.⁹ (AHRI, No. 54 at p. 2) Also in response to the March 2022 Preliminary Analysis, AHRI added that it filed joint comments with the Association of Home Appliance Manufacturers regarding the OEM certification compliance burden and

⁶ U.S. DOE Building Technology Office, Energy Savings Potential and Opportunities for High-Efficiency Electric Motors in Residential and Commercial Equipment, December 2013. Available at: www.energy.gov/eere/buildings/downloads/motor-energy-savings-potential-report.

⁷ See, for example, Nidec and ABB: acim.nidec.com/motors/usmotors/industry-applications/hvac; bit.ly/3wEIYyu.

⁸ See 87 FR 63588, 63591 (Oct. 10, 2022).

⁹ In their comments, AHRI refers to this publication as a Notice of Data Availability.

increases to costs without increases to finished good efficiency. AHRI commented that DOE failed to address these comments in the June 2023 Direct Final Rule and accompanying NOPR because DOE assessed that the majority of the stakeholder concerns stemmed from regulating SNEMs and air-over SNEMs. AHRI asserted that even if a minority of the concerns was given to air-over motors, that would not absolve DOE of its statutory duty in determining whether a standard is economically justified. AHRI commented that DOE must consider the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard and, in the case of air-over motors, finished goods manufacturers can be either the manufacturer or the consumer, depending on how the component is purchased. (*Id.* at pp. 2–3)

AHRI further commented that some OEMs purchase complete air-over motors for incorporation while other OEMs buy motor components and assemble the motor into the equipment. In the latter case, AHRI stated that the OEM would be considered a motor manufacturer and undergo the time and cost to certify that the motor meets any pertinent standards. AHRI added that the expanded scope of the June 2023 Direct Final Rule would redefine OEMs as electric motor manufacturers and that, for imported equipment, the expanded scope would impact OEMs who purchase air-over motor components and air-over motors that are not already sold on the U.S. market. However, AHRI commented that DOE did not include these manufacturer impacts in the standards June 2023 Direct Final Rule analysis. Specifically, AHRI commented that the shipments estimates used in the analysis are underestimated and questioned whether DOE included air-over motors included in OEM equipment. (AHRI, No. 54 at p. 4) In addition, AHRI commented that any OEMs that are considered a motor manufacturer would also be subject to new requirements for establishing or verifying performance in an independent laboratory. AHRI asserted that these air-over motor specific costs were not included. AHRI noted that the March 2022 Prelim TSD included minor increases in installation cost as efficiency levels rise attributed to the additional cost of an electrician (*Id.* at p. 5) AHRI commented that such regulatory burdens have left manufacturers in an almost constant state of redesign and testing and that innovation was no longer as important as just modifying products to meet new

and ever-changing regulatory burdens. (*Id.* at p. 8)

Regarding the shipments estimate, as previously noted, the air-over motors that are subject to the June 2023 Direct Final Rule are limited to those meeting the same criteria as described at 10 CFR 431.25(g) but otherwise have an air-over enclosure or a specialized frame size and an air-over enclosure. Specifically, these are electric motors with horsepower greater than or equal to 1 hp, that are NEMA Design A or B and are built in standard NEMA frame size ¹⁰ or specialized frame size (or IEC equivalents). This excludes most electric motors included in heating, ventilation, air-conditioning, and refrigeration (“HVACR”) equipment manufactured by AHRI, which typically are not NEMA Design A or B, have different frame constructions, or are single phase motors. Therefore, DOE believes the shipments estimate used in the June 2023 Direct Final rule is correct as it is not intended to include the totality of the air-over electric motor market.

The manufacturer impact analysis (“MIA”) for this rulemaking specifically examines the conversion costs that electric motor manufacturers (including OEMs that also manufacture electric motors) would incur due to the analyzed energy conservation standards for electric motors in comparison to the revenue and free cash electric motor manufacturers receive. In addition, the MIA includes the additional testing costs for newly regulated equipment to comply with new efficiency standards.¹¹ Regarding OEMs who purchase components of an air-over motor, DOE notes that motors assembled this way are a minority of overall motors covered by the June 2023 Direct Final Rule. In addition, for motors that are assembled this way, the conversion costs associated with the new and amended energy conservation standards would not be significant as the OEM is not manufacturing the components that would have to be changed, and those conversion costs would be incurred by the component manufacturers, which are typical motor manufacturers (*i.e.*, included as NEMA members) and the focus of the manufacturer impact analysis conducted in the June 2023 Direct Final Rule. Therefore, DOE has determined that these comments do not

¹⁰ More specifically, are built in a three-digit or four-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent).

¹¹ See section IV.G of the June 2023 Direct Final Rule. 88 FR 36006, 36112.

provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule. JCI commented that it understands DOE’s authority to impose requirements on manufacturers of covered products, but does not agree with DOE’s definition that equipment importers should be responsible for embedded electric motor test and certification requirements if indeed this is the case. JCI commented also that it was not clear if DOE’s revised definition of “air-over” and “manufacturer,” which specifically includes importation and assembly, would result in importers of finished goods like JCI being responsible for embedded motor standards and testing. (JCI, No. 53 at p. 2)

In the June 2023 Direct Final Rule, DOE did not establish revised definitions for “air-over” and “manufacturer.” Therefore, DOE does not consider this comment to be an adverse comment. The definition of “air-over electric motor” was established by the test procedure final rule published on October 19, 2022. 87 FR 63588, 63609. The definition of “manufacture” and “manufacturer” can be found at 10 CFR 431.2 and were not revised by the June 2023 Direct Final Rule. Finally, DOE clarifies that any electric motor in scope that is imported into the United States would need to comply with the new and amended energy conservation standards adopted in the June 2023 Direct Final Rule.

E. Replacement Motor Certification Burden

AHRI commented that HVACR and water heating equipment are built, tested, and certified as a complete design and that slight changes to the motors can have significant and unexpected impacts on performance and efficiency. AHRI stated that there are a variety of safety standards affected by air flow in addition to the performance standards and that the testing of all legacy equipment because of a motor change would be cost and resource prohibitive. In addition, AHRI noted that testing could be impractical if the HVACR or water heating equipment was out of production because OEMs would be forced to rebuild an out-of-production unit for the purpose of testing the new motor or risk abandoning a reasonable repair path for consumers. AHRI asserted that some equipment may not be able to be retroactively designed with new motors due to new energy conservation standards or refrigerant changes. (AHRI, No. 54 at pp. 5–6)

JCI commented that DOE did not account for the cost burden of certifying

replacement motors for legacy equipment, which it believes would be required per the revised scope definition. JCI stated that certifying replacement motors to new energy conservation standards for legacy equipment would likely require the building of at least partial, if not complete, prototypes as well as substantial investment in test time to cover dozens of different legacy applications for products still within their expected service life. JCI add that its legacy product offering ranges in size from 1 ton to over 120 tons (nominal cooling) for its rooftop and residential offerings and has dozens of unique electric motor applications still within their remaining service life. JCI commented also that in cases where a new energy conservation standard results in a new, larger NEMA frame size, it may not be possible to develop such a product and thus result in premature equipment replacement or a special one-off design which will greatly increase cost to consumers. JCI requested that DOE consider the negative impacts of the June 2023 Direct Final Rule and rescind the revised definition scope of covered motors. (JCI, No. 53 at p. 2)

While DOE conducts a MIA to address the industry burden on the manufacturer of the considered covered equipment, DOE typically does not include the impacts to other manufacturers. The MIA for this rulemaking specifically examined the conversion costs that electric motor manufacturers (including OEMs that also manufacture electric motors) would incur due to the analyzed energy conservation standards for electric motors in comparison to the revenue and free cash electric motor manufacturers receive. The OEM testing and certification costs were not included in the MIA, and neither were the OEM revenues and free cash flows, as these costs and revenue are not specific to electric motor manufacturers. However, as noted by the Electric Motors Working Group, the adopted standards for air-over electric motors¹² are not expected to cause broad market disruption. (Electric Motors Working Group, No. 35 at p. 4) In addition, as noted in section IV.C of the June 2023 Direct Final rule, DOE fixed the frame

size, which remained the same across efficiency levels. 88 FR 36066, 36097. As such, the energy conservation standards adopted in the June 2023 Direct Final Rule would preserve the frame sizes of electric motors on the market today. Consequently, although DOE did not include any OEM testing and certification costs in the June 2023 Direct Final Rule, DOE does not estimate these impacts to be significant. Therefore, DOE has determined that these comments do not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

AHRI commented that DOE used an average application lifetime of 15 years for applications driven by electric motors and came to an average lifetime of 11.8 years for the 5 hp air-over motor. AHRI noted that DOE has used much longer equipment lifetimes for some AHRI products, such as air-cooled commercial package air conditioners and heat pumps where DOE used a lifetime of 33.88 years for 30-ton equipment in a rulemaking.¹³ AHRI asserted that such equipment could have two or three motor replacements during its lifetime and that if the replacement motor becomes unavailable, the entire OEM product would have to be replaced rather than repaired. In addition, AHRI commented that DOE did not account for the potential unavailability of the motors in use in today's HVACR equipment as well as the cost to OEMs, and ultimately to the consumer, of retroactively designing equipment in use today for motors that become unavailable upon new standards. (AHRI, No. 54 at p. 5)

DOE notes that the Electric Motors Working Group stated the adopted standards for air-over electric motors would avoid market disruption. (Electric Motors Working Group, No. 35 at p. 4) In addition, the adopted levels would preserve key criteria that are used to identify suitable replacement motors,¹⁴ such as frame sizes, voltages, horsepower, pole configurations, enclosure constructions, and mountings, and DOE believes drop-in replacement motors would remain available and there would be no major market disruption, as highlighted by the Electric Motors Working Group. DOE

further notes that OEM equipment can usually accommodate different models of motors and online cross-referencing tools¹⁵ exist to help consumers identify motors that can be used as drop-in replacements. Therefore, DOE has determined that these comments do not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

F. Regulatory Burden

AHRI stated that the burdens of the June 2023 Direct Final Rule would be added to an already large industry burden due to other regulatory bodies requiring redesign and recertification of products made by its members. AHRI described the regulatory actions that will impact its products: (1) UL 60335-2-40 will be required for all cooling equipment on January 1, 2024; (2) the American Innovation and Manufacturing Act requires the use of low global warming potential ("GWP") refrigerants in residential and light commercial air conditioners, which AHRI expects to be required within two years and will require updated safety standards to address refrigerant leaks because GWP refrigerants are more flammable, and in commercial refrigeration equipment, which has a statutory deadline of October 7, 2023; (3) new federal efficiency levels and metrics with compliance dates ranging from January 1, 2024 to January 1, 2025 for variable refrigerant flow ("VRF") equipment, dedicated outdoor air systems, computer room air conditioners, air cooled three-phase small central air conditioners and heat pumps and VRF with a cooling capacity less than 65,000 Btu/h, and commercial fans; (4) California's regulation of commercial fans required on November 16, 2023; and (5) test procedures that are currently in the rulemaking process for commercial package air conditioners and heat pumps, single package vertical air conditioners and heat pumps, package terminal air conditioners and heat pumps, and water source heat pumps. (AHRI, No. 54 at pp. 6–7)

The June 2023 Direct Final Rule examined the cumulative regulatory burden that affects the manufacturers of the covered equipment (*i.e.*, electric motors). 88 FR 36066, 36133–36134. As previously stated, DOE typically does not include the impacts to other manufacturers. Therefore, DOE has determined that this comment does not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

¹² The majority of the electric motors for which the June 2023 Direct Final rule is establishing new and amended standards are not incorporated into HVACR equipment. Electric motors with a horsepower greater than or equal to 100 hp and less than or equal to 250 hp and those with a horsepower greater than 500 hp and less than or equal to 750 hp are larger motors that are not used as components.

¹³ DOE Commercial Unitary Air Conditioners and Heat Pumps ASRAC Working Group meeting March 21–22, 2023. Available at <https://www.regulations.gov/document/EERE-2022-BT-STD-0015-0080>.

¹⁴ See "How to cross reference an OEM motor." Available at hvacknowitall.com/blog/how-to-cross-reference-an-oem-motor (last accessed September 28, 2023); Rheem and Ruud PROTECH "Selecting a Motor." Available at assets.unilogcorp.com/267/ITEM/DOC/PROTECH_51_100998_33_Catalog.pdf (last accessed September 28, 2023).

¹⁵ See www.emotorsdirect.ca/hvac.

G. EPCA Requirements

AHRI commented that EPCA requires that any proposed new or amended energy conservation standards must result in significant energy savings and be technologically feasible and economically justified and cited to 42 U.S.C. 6295(o). AHRI commented that it does not believe that the energy conservation standards in the June 2023 Direct Final Rule comply with this requirement. (AHRI, No. 54 at p. 8)

In the June 2023 Direct Final Rule, DOE determined that the adopted energy conservation standards would result in significant energy savings and are technologically feasible and economically justified and provided supporting analysis. 88 FR 36066, 36072, 36120–36146. For the reasons discussed in the June 2023 Direct Final Rule, DOE has determined that the comment provided by AHRI does not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

H. Other Comments

AHRI commented that DOE's electric motors test procedure, which would rate motor efficiency at full load, fails to adequately capture representative load conditions for finished products and equipment that is largely optimized for, and regulated on, part-load performance. AHRI commented also that regulating special and definite purpose motors, particularly with the proposed third-party nationally recognized certification program requirements, will add cost, reduce market choices, and do little, if anything, to realize further energy savings. AHRI asserted that full-load operating temperature in testing may be greater than the rated operating temperature of the motor while it is operating in its intended air over application, which AHRI claimed to be particularly problematic for air-over motors. AHRI stated that DOE was working in other areas to design test procedures that reward part-load performance and that it was inexplicable that DOE proposed to do the opposite here. (AHRI, No. 54 at p. 3)

DOE notes that this comment relates to the electric motors test procedure and is not related to the June 2023 Direct Final Rule. As such, DOE does not consider this comment as an adverse comment for the June 2023 Direct Final Rule.

Ravnitzky requested clarification on whether the June 2023 Direct Final Rule applied to small electric motors, dedicated purpose pool pump motor,

and motors that are used in consumer products. (Ravnitzky, No. 49 at p. 1) DOE clarifies that the June 2023 Direct Final Rule amends and establishes energy conservation standards for electric motors that meet the newly adopted scope criteria at 10 CFR 431.25 and are in the scope of subpart B of 10 CFR part 431. Section 431.11 specifies that subpart B does not cover “small electric motors,” which are addressed in subpart X of 10 CFR part 431 and does not cover electric motors that are “dedicated-purpose pool pump motors,” which are addressed in subpart Z of 10 CFR part 431. See 10 CFR 431.11. Therefore, the June 2023 Direct Final Rule does not apply to small electric motors or dedicated purpose pool pump motors. In addition, while the scope of the June 2023 Direct Final Rule does not differentiate electric motors by end-use applications, it only includes electric motors that operate on polyphase power supply and is unlikely to include electric motors incorporated in consumer products (which typically operate on single phase power supply). Accordingly, DOE does not consider the comment from Ravnitzky to be an adverse comment.

Ravnitzky commented that there are many small business manufacturers of electric motors and that DOE should provide exemptions, waivers, or alternative standards for small businesses and provide sufficient time for small businesses to adjust to the new requirements. (Ravnitzky, No. 49 at pp. 1–2)

DOE notes that manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 1003 for additional details. Therefore, DOE has determined that the comment from Ravnitzky does not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

Hogan commented that for permanent capacitive split phase motors (“PSC”), the motor efficiency decreases dramatically as the capacitor degrades and that efficiency loss is the dominant failure mode for PSC motors. Hogan added that DOE's analysis only considered the “as-built” efficiency of the motor and that DOE should have determined the actual running efficiency of motors over their entire operating life for several operating environments and applications that degrade over time due to partial demagnetization. Hogan also stated that the inverter drive efficiency also degrades over time. Further, Hogan disagreed with DOE's analysis, which

assumed that the price of permanent magnet inverter motors would decline to that comparable of three phase motors, and stated that the induction motor would always have a cost advantage. Hogan also noted that inverter drive motors only produce greater efficiency in applications as a result of variable shaft speed. (Hogan, No. 50 at p. 1)

PSC motors, permanent magnet inverter motors, and inverter drives were not included in the scope of products for which DOE established and amended energy conservation standards in the June 2023 Direct Final Rule. Instead, in the LCC and national impact analysis (“NIA”) analysis, DOE added a scenario to account for the fact that some consumers may choose to purchase a synchronous electric motor (*i.e.*, a permanent magnet inverter motors, out of scope of the June 2023 Direct Final Rule) rather than a more efficient NEMA Design A or B electric motor or select to purchase a variable speed drive (*i.e.*, an inverter drive) in combination with a compliant electric motor. DOE developed a consumer choice model to estimate the percentage of consumers that would purchase a synchronous electric motor based on the payback period of such investment. 88 FR 36066, 36104. As part of this sensitivity analysis DOE did not assume any decline in price for permanent magnet inverter motors. Instead, DOE assumed that the price of a more efficient NEMA Design A or B electric motor would increase compared to a baseline NEMA Design A or B electric motor.¹⁶ DOE acknowledges that there is uncertainty around the efficiency of permanent magnet inverter motors and inverter drives which may degrade over time. In the June 2023 Direct Final Rule, DOE noted that there is uncertainty as to which rate such substitution would occur due to the uncertainty in the estimated savings from speed controls, installation costs, and selected decision criteria, and DOE did not incorporate this scenario as part of the reference analysis. *Id.* As such, this analysis was not used to justify the adopted standards in the June 2023 Direct Final Rule.¹⁷ Therefore, DOE has determined that this comment does not provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

Hogan commented that the efficiency of residential and commercial motors can be increased higher than what is

¹⁶ See Table 8C.2.1 in Appendix 8C of the June 2023 Direct Final Rule Technical Support Document.

¹⁷ See Appendix 8C of the June 2023 Direct Final Rule Technical Support Document.

proposed by DOE at minimal costs when wired for three phase power in comparison to using an inverter drive. Hogan added that DOE should reasonably require good efficiency for single phase alternative current (“AC”) motors for many fractional horsepower motors (*i.e.*, horsepower less than 1) and otherwise advance efficiency through three phase power. (Hogan, No. 50 at p. 1)

As noted previously, the scope of the June 2023 Direct Final Rule only includes electric motors that operate three phase power supply (*i.e.*, AC induction polyphase electric motors). 88 FR 36066, 36079–36081. In addition, the scope of the June 2023 Direct Final Rule includes motors with horsepower equal to or greater than 1 horsepower. *Id.* As such, DOE did not analyze technology options for single phase AC motors and fractional horsepower motors (*i.e.*, with horsepower less than 1) in the June 2023 Direct Final Rule and does not consider the recommendation from Hogan to provide a reasonable basis for withdrawal of the June 2023 Direct Final Rule.

IV. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. (42 U.S.C. 6295 (p)(4)(A)(i) and (C)(i)(II); 42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General of the United States (“Attorney General”) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) To assist the Attorney General in making this determination, DOE provided the Department of Justice (“DOJ”) with copies of the June 2023 Direct Final Rule, the corresponding NOPR, and the June 2023 Direct Final Rule TSD for review. DOE has published DOJ’s comments at the end of this document.

In its letter responding to DOE, DOJ concluded that, based on its review, it is unlikely that the proposed energy conservation standards for electric motors would have a significant adverse impact on competition.

V. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (“NEPA”), DOE had analyzed the direct final rule in accordance with NEPA and

DOE’s NEPA implementing regulations (10 CFR part 1021). DOE determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B, B5.1, because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE determined that promulgation of this direct final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an environmental assessment or an environmental impact statement.

VI. Conclusion

In summary, based on the previous discussion, DOE has determined that the comments received in response to the direct final rule for new and amended energy conservation standards for electric motors do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the energy conservation standards set forth in the direct final rule became effective on September 29, 2023. Compliance with these standards is required on and after June 1, 2027.

Signing Authority

This document of the Department of Energy was signed on October 16, 2023, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 17, 2023.

Treena V. Garrett,

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

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

August 21, 2023

Ami Grace-Tardy, Assistant General Counsel
for Legislation, Regulation and Energy
Efficiency, U.S. Department of Energy,
Washington, DC 20585, *Ami.Grace-Tardy@
hq.doe.gov*

Re: Energy Conservation Standards for
Electric Motors, DOE Docket No. EERE–
2020–BT–STD–0007

Dear Assistant General Counsel Grace-
Tardy:

I am responding to your June 20, 2023
letter seeking the views of the Attorney
General about the potential impact on
competition of proposed energy conservation
standards for electric motors.

Your request was submitted under Section
325(o)(2)(B)(i)(V) of the Energy Policy and
Conservation Act, as amended (EPCA), 42
U.S.C. 6295(o)(2)(B)(i)(V), which requires the
Attorney General to determine the impact of
any lessening of competition likely to result
from proposed energy conservation
standards. The Attorney General’s
responsibility for responding to requests from
other departments about the effect of a
program on competition has been delegated
to the Assistant Attorney General for the
Antitrust Division in 28 CFR 0.40(g). The
Assistant Attorney General for the Antitrust
Division has authorized me, as the Policy
Director for the Antitrust Division, to provide
the Antitrust Division’s views regarding the
potential impact on competition of proposed
energy conservation standards on his behalf.

In conducting its analysis, the Antitrust
Division examines whether a proposed
standard may lessen competition, for
example, by substantially limiting consumer
choice, by placing certain manufacturers at
an unjustified competitive disadvantage, or
by inducing avoidable inefficiencies in
production or distribution of particular
products. A lessening of competition could
result in higher prices to manufacturers and
consumers.

We have reviewed the proposed standard
contained in the Notice of Proposed
Rulemaking and the related Technical
Support Document. We have also reviewed
public comments and information provided
by industry participants.

Based on this review, our conclusion is
that the proposed energy conservation
standards for electric motors are unlikely to
have a significant adverse impact on
competition.

Sincerely,
/s/

David G.B. Lawrence Policy Director

[FR Doc. 2023–23204 Filed 10–19–23; 8:45 am]

BILLING CODE 6450–01–P

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

[Docket No. FAA–2021–0850; Airspace
Docket No. 21–ANM–26]

RIN 2120–AA66

**Modification of Class E Airspace;
Northeast Wyoming Regional Airport,
Gillette, WY**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface at Northeast Wyoming Regional Airport, Gillette, WY. This action supports the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective date 0901 UTC, January 25, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to support IFR operations at Northeast Wyoming Regional Airport, Gillette, WY.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0850 in the **Federal Register** (88 FR 38412; June 13, 2023) proposing to modify Class E airspace at Northeast Wyoming Regional Airport, Gillette, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA modified the Class E5 Airspace legal description for Northeast Wyoming Regional Airport, Gillette, WY, to simplify and shorten the description. The phrase “and that airspace” was removed from the description, and the phrase “that airspace” was replaced with the word “within.” Those changes are reflected in this final rule.

Incorporation by Reference

Class E5 airspace areas are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface at Northeast Wyoming Regional Airport, Gillette, WY.

The Class E airspace extending upward from 700 feet above the surface is modified to include a 5-mile radius of the airport. This area accommodates arriving IFR operations below 1,500 feet above the surface and departing IFR

operations until they reach 1,200 feet above the surface.

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. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

ANM WY E5 Gillette, WY [Amended]

Northeast Wyoming Regional Airport, WY
(Lat. 44°20'56" N, long. 105°32'22" W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the airport, within 4 miles each side of the 170° bearing extending from the 5-mile radius to 14 miles south of the airport, and within 4 miles each side of the 350° bearing extending from the 5-mile radius to 11 miles north of the airport.

* * * * *

Issued in Des Moines, Washington, on
October 13, 2023.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2023–23123 Filed 10–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9979]

RIN 1545–BQ81

**Additional Guidance on Low-Income
Communities Bonus Credit Program**

Correction

In Rule Document 2023–17078, appearing on pages 55506 to 55548 in the issue of Tuesday, August 15, 2023, make the following correction:

PART 1 [Corrected]

■ On page 55540, in the second column, beginning on line 40, the Authority citation is corrected to read as forth below:

Authority: 26 U.S.C. 7805 unless otherwise noted.

* * * * *

Section 1.48(e)–1 issued under 26 U.S.C. 48

* * * * *

[FR Doc. C2–2023–17078 Filed 10–19–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9983]

RIN 1545–BQ14

**Mortality Tables for Determining
Present Value Under Defined Benefit
Pension Plans**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations prescribing mortality tables to be used for most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. The tables are used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for the plan. These mortality tables are also relevant for determining the minimum required amount of a lump-sum distribution from such a plan. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain defined benefit pension plans.

DATES:

Effective date: These regulations are effective October 20, 2023.

Applicability date: These regulations apply to valuation dates occurring on or after January 1, 2024.

Incorporation by reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 20, 2023.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Arslan Malik or Linda Marshall at (202) 317–6700; concerning the construction of the base mortality tables and the static mortality tables for 2024, Christopher Denning at (202) 317–5755 (not toll free).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans, and section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not

multiemployer plans.¹ Section 430(a) defines the minimum required contribution for a plan by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those mortality tables are to be based on the actual mortality experience of pension plan participants and projected trends in that experience. In prescribing those mortality tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans. Under section 430(h)(3)(B), the Secretary is required to revise any mortality table in effect under section 430(h)(3)(A) at least every 10 years to reflect actual mortality experience of pension plan participants and projected trends in that experience. Under section 430(h)(3)(C), a plan sponsor may request the Secretary's approval to use plan-specific substitute mortality tables that meet requirements specified in the statute rather than the generally applicable mortality tables. If approved, the substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables

¹ Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829 (1974), as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA. Similarly, Treasury regulations under sections 431 and 433 apply for purposes of sections 304 and 306 of ERISA.

provided pursuant to section 430(h)(3)(A). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and for individuals with disabilities occurring in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.²

Section 417(e)(3) generally provides that the present value of certain benefits under a qualified pension plan (including single-sum distributions) must not be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Section 417(e)(3)(B) defines the term “applicable mortality table” as the mortality table specified for the plan year for minimum funding purposes under section 430(h)(3)(A) (without regard to the rules for substitute mortality tables under section 430(h)(3)(C) or mortality tables for disabled individuals under section 430(h)(3)(D)), modified as appropriate by the Secretary. The modifications made by the Secretary to the section 430(h)(3)(A) mortality table to determine the section 417(e)(3)(B) applicable mortality table are not addressed in these regulations. Revenue Ruling 2007–67, 2007–2 CB 1047, describes the modifications that are currently applied to determine the section 417(e)(3)(B) applicable mortality table.

Final regulations under section 430(h)(3) were published in the **Federal Register** on October 5, 2017, in TD 9826, 82 FR 46388 (the 2017 regulations). Section 1.430(h)(3)–1 prescribes base mortality tables and a set of mortality improvement rates, which may be reflected through the use of either generational mortality tables or static mortality tables. The generational mortality tables are a series of mortality tables, one for each year of birth, each of which fully reflects projected trends in mortality rates. The static mortality tables (which are updated annually³) use a single mortality table for all years of birth to approximate the present

value that would be determined using the generational mortality tables.

The mortality tables included in the 2017 regulations are based on the mortality tables included in the RP–2014 Mortality Tables Report⁴ (referred to in this preamble as the RP–2014 mortality tables), which was released by the Retirement Plan Experience Committee (RPEC) of the Society of Actuaries (SOA) in October 2014 (as revised in November 2014), and a set of mortality improvement rates as released by RPEC in the Mortality Improvement Scale MP–2016 Report.⁵ In 2016, RPEC initiated a study of private-sector retirement plans in the U.S. in order to provide an update to the RP–2014 mortality tables, and in 2019, RPEC issued the Pri-2012 Private Retirement Plans Mortality Tables Report (Pri-2012 Report).⁶ In October 2021, RPEC published the Mortality Improvement Scale MP–2021 Report (MP–2021 Report), which includes the latest mortality improvement scale issued by RPEC.⁷

The standards prescribed for developing the mortality tables under section 430(h)(3)(A) are the same as the standards that are prescribed for developing mortality tables for multiemployer plans under section 431(c)(6)(D)(iv)(II) (which are used to determine current liability in order to determine the minimum full funding limitation under section 431(c)(6)(B)). These standards also apply for CSEC plans described in section 414(y) for purposes of developing mortality tables that are used for purposes of section 433(h)(3)(B)(i) (to determine current liability in order to determine the minimum full funding limitation under section 433(c)(2)(C) and the funded current liability percentage under section 433(i)).

Proposed regulations to update the mortality tables issued under section 430(h)(3) and make certain other changes regarding those tables were published in the **Federal Register** on April 28, 2022 (87 FR 25161) (the proposed regulations). Five comments on the proposed regulations were received. No commenters requested to speak at the scheduled public hearing;

accordingly, the public hearing was canceled.

On October 27, 2022, RPEC released a report titled the “RPEC 2022 Mortality Improvement Update.”⁸ Unlike RPEC’s previously issued reports regarding mortality improvement, this report does not include a new mortality improvement scale. RPEC noted that, as of the date of that report, the most recent year for which full-year mortality data was available was 2020, which was severely affected by the COVID–19 pandemic. RPEC concluded that it would not be appropriate to incorporate, without adjustment, the substantially higher rates of mortality experience from 2020 into the models RPEC had previously used to project future mortality.⁹ Therefore, RPEC chose not to release a new mortality improvement scale in 2022. Instead, RPEC recommended the use of an assumed increase in mortality rates to reflect the impact of the COVID–19 pandemic, which would be phased out after an appropriate period. RPEC did not recommend a specific level for this assumed increase but provided data about mortality rates for 2020 through the first half of 2022 and provided examples of assumed increases that could be used (including the assumed increase used in the 2022 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds).

Section 335 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), which was enacted on December 29, 2022 as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328 (136 Stat. 4459), instructs the Secretary or the Secretary’s delegate to amend the regulations under section 430(h)(3)(A) no later than June 30, 2024. Under this provision, for valuation dates occurring during or after 2024, the mortality improvement rates specified in those regulations must not assume for years beyond the valuation date mortality improvements at any age that are greater than 0.78 percent. Section 335 of the SECURE 2.0 Act also instructs the Secretary (or delegate) to modify the 0.78 percent limitation to reflect material changes in the overall rate of improvement projected by the Social Security Administration.

² Mortality tables that were permitted to be used for disabled participants under section 412(l)(7)(C)(iii)(I) as in effect before 2008 were provided in Rev. Rul. 96–7, 96–3 IRB 12. Notice 2008–29, 2008–1 CB 637, adopted those tables for use under section 430(h)(3)(D).

³ Static mortality tables were published in Notice 2017–60, 2017–43 IRB 365, Notice 2018–02, 2018–2 IRB 281, Notice 2019–26, 2019–15 IRB 943, Notice 2019–67, 2019–52 IRB 1510, Notice 2020–85, 2020–51 IRB 1645, and Notice 2022–22, 2022–20 IRB 1057.

⁴ This report is available at <https://www.soa.org/globalassets/assets/files/research/exp-study/research-2014-rp-report.pdf>.

⁵ This report is available at <https://www.soa.org/globalassets/assets/Files/Research/Exp-Study/mortality-improvement-scale-mp-2016.pdf>.

⁶ This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2019/pri-2012-mortality-tables-report.pdf>.

⁷ This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2021/2021-mp-scale-report.pdf>.

⁸ This report is available at <https://www.soa.org/resources/research-reports/2022/rpec-mortality-improvement/>.

⁹ RPEC noted that, if it had used its standard graduation model and had included 2020 data in accordance with its usual practice, this would have had the effect of elevating mortality improvement rates for periods prior to the pandemic.

After consideration of public comments received on the proposed regulations (and taking into account section 335 of the SECURE 2.0 Act), the proposed regulations are adopted by this Treasury decision, with certain changes. These changes include: (1) a delay in the applicability date; (2) modifications in the mortality improvement rates to reflect the expected ongoing impact of COVID-19 on mortality rates and to reflect the 0.78 percent annual cap on mortality improvement rates as required by section 335 of the SECURE 2.0 Act; and (3) a minor change related to the treatment of individuals who are not identified as male or female.

Summary of Comments and Explanation of Revisions

These regulations set forth the updated methodology for determining the generally applicable mortality tables that are used to calculate present value under section 430 of the Code. Pursuant to section 417(e)(3)(B), a modified version of these tables is used for purposes of determining the amount of a single-sum distribution (or another accelerated form of distribution). In addition, these tables are used to determine current liability for multiemployer plans under section 431(c)(6) and CSEC plans under section 433(h).

The updated methodology for determining the generally applicable mortality tables under section 430(h)(3)(A) is issued pursuant to the requirement under section 430(h)(3)(B) to revise the mortality tables used under section 430 to reflect the actual mortality experience of pension plan participants and projected trends in that experience as well as the requirement under section 335 of the SECURE 2.0 Act that mortality improvement rates provided under the regulations for years after the year that includes the applicable valuation date may not exceed 0.78 percent per year. As under the 2017 regulations and the proposed regulations, the methodology for determining generally applicable mortality tables involves the separate determination of base mortality tables and the projection of mortality improvement.

A. Base Mortality Tables

These regulations adopt the base mortality tables set forth in the proposed regulations for use under section 430(h)(3)(A) of the Code, which are derived from the tables set forth in the Pri-2012 Report. No commenter suggested any alternative source for base mortality tables.

Like the base mortality tables provided in the 2017 regulations, the base mortality tables set forth in these regulations are gender-distinct and provide separate non-annuitant and annuitant mortality rates. The base mortality tables have a base year of 2012 (the central year of the experience study used to develop the mortality tables in the Pri-2012 Report). These base tables generally have the same mortality rates as the employee and non-disabled annuitant mortality rates (amounts weighted) that were released by RPEC in connection with the Pri-2012 Report. However, these base tables also include non-annuitant mortality rates for ages below 18 and above 80 and annuitant mortality rates for ages below age 50. This generally is the same approach that was used to develop the base mortality tables in the 2017 regulations. The preamble to the proposed regulations describes the methodology that was used to develop non-annuitant mortality rates for ages below age 18 and above age 80 and annuitant mortality rates for ages below age 50. See 87 FR 25161, 25163.

B. Mortality Improvement

These regulations adopt the methodology set forth in the proposed regulations regarding the adjustment of the base mortality tables to reflect expected trends in mortality improvement but use different mortality improvement rates. The proposed regulations applied the Scale MP-2021 Rates (the mortality improvement scale in the MP-2021 Report) for valuation dates in the 2023 calendar year. This mortality improvement scale was developed using the same underlying methodology used to develop earlier mortality improvement scales but reflects historical population data through 2019 and the change to the RPEC-selected assumptions for the long-term rate of mortality improvement that was first incorporated in the Mortality Improvement Scale MP-2020 Report.¹⁰

One commenter expressed concern that the expected long-term improvements in longevity reflected in the MP-2021 Report may be overly optimistic and suggested that regulations apply a cap on the long-term mortality improvement rates used. Another commenter recommended that future mortality rates be increased to reflect the long-term impact of COVID-19.

¹⁰ This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2020/mortality-improvement-scale-mp-2020.pdf>.

After considering all the comments and the RPEC 2022 Mortality Improvement Update, the Department of the Treasury (Treasury Department) and the IRS have decided to adopt a modified version of the MP-2021 Mortality Improvement Scale for valuation dates occurring on or after January 1, 2024. The mortality improvement scale applicable for valuation dates occurring on or after January 1, 2024, which is referred to as the 2024 Adjusted Scale MP-2021 Rates, is based on the Scale MP-2021 Rates. However, the 2024 Adjusted Scale MP-2021 Rates reflect a modification to the Scale MP-2021 Rates that eliminates any mortality improvement during 2020, 2021, 2022, and 2023 (while retaining any projected mortality deterioration for those years under the MP-2021 Mortality Improvement Scale).¹¹ In addition, in response to the statutory instruction in section 335 of the SECURE 2.0 Act, the 2024 Adjusted Scale MP-2021 incorporates a cap on mortality improvement rates of 0.78 percent per year for years after 2024.¹² This cap on mortality improvement rates is statutorily required by a clear statutory instruction, and public comment on the cap rate is unnecessary.

The Treasury Department and the IRS intend to consider new data regarding mortality trends of the general population as it becomes available (including future reports and mortality improvement scales issued by RPEC, as well as projections of mortality improvement issued by the Social Security Administration) and to specify new mortality improvement rates that reflect updated data when future modifications become appropriate. Those new mortality improvement rates will incorporate the cap on mortality improvement rates described in section 335 of the SECURE 2.0 Act (including a change to the level of the 0.78 percent cap on annual mortality improvement rates as a result of any material changes in the overall rate of improvement

¹¹ Because the mortality rates provided in these regulations apply beginning in 2024 (that is, after the height of the COVID-19 pandemic), the significantly higher rates of mortality experience during 2020 through 2023 are not determinative of mortality rates for later years. However, the Treasury Department and the IRS expect that mortality in the future will be marginally higher than what was projected based on mortality experience prior to the COVID-19 pandemic. This expectation has been reflected through the elimination of any mortality improvement assumption for the years 2020 through 2023.

¹² Because the 0.78 percent cap applies to rates for years after the year that includes the applicable valuation date, the first impact of that cap will be on the mortality rates that are projected to apply in 2025.

projected by the Social Security Administration).

C. Use of Static Tables for Small Plans

The 2017 regulations provide for the use of separate generational non-annuitant and annuitant mortality tables and separate static non-annuitant and annuitant mortality tables. However, the proposed regulations provided for the elimination of the use of static mortality tables other than for small plans. This change was proposed because the Treasury Department and the IRS believe that there was no longer a need to allow the use of static mortality tables for larger plans (as most actuarial firms have the capability to use generational mortality tables) and to minimize anti-selection by plan sponsors who determine that the use of static mortality tables results in lower minimum funding requirements. No commenters objected to this change, and these regulations adopt that change.

D. Individuals Not Identified as Male or Female

One commenter requested that final regulations clarify how the mortality tables under section 430(h)(3)(A) are applied in the case of a participant or beneficiary who identifies as nonbinary. To address this issue, and to clarify how these tables should be applied for the portion of a plan's population for whom gender data is not available, the regulations provide that the plan's actuary must use a reasonable approach in applying the section 430(h)(3)(A) mortality tables with respect to the portion of a plan's population whose gender is not identified as male or female (for example, a plan participant who identifies as nonbinary or for whom gender is not known). The regulations include two examples of reasonable approaches that may be used for this purpose. These two approaches are merely two reasonable methods for determining liabilities with respect to individuals for whom male or female gender is not identified, and other reasonable approaches may be appropriate.¹³

Under the first approach, the liability for an individual is determined as the weighted average of the liability calculated as if the individual were male and the liability calculated as if the individual were female, using an appropriate weighting that takes into

account the distribution of gender in the plan's population for individuals for whom gender is identified. For example, if the gender distribution in a plan's population for whom the gender is identified is $\frac{2}{3}$ male and $\frac{1}{3}$ female, the liability calculated for the individual would be equal to $\frac{2}{3}$ of the liability calculated as if the individual were male and $\frac{1}{3}$ of the liability calculated as if the individual were female.

The second approach might be used in connection with actuarial software that is not able to apply a weight to individuals in the plan census. Under the second approach, either male or female status is assigned randomly to an individual for whom male or female gender is not identified in a manner that is expected to result in an appropriate proportion of males and females for the plan population that takes into account the distribution of gender for individuals in the plan's population for whom gender is identified. For example, if the gender distribution in a plan population for whom the gender is identified is $\frac{2}{3}$ male and $\frac{1}{3}$ female, a gender may be assigned to an individual for whom gender is not identified based on the individual's birthdate, with someone born in the first 8 months of the year assigned male gender and someone born in the last 4 months of the year assigned female gender.

Applicability Date

These regulations apply for valuation dates occurring on or after January 1, 2024.

Effect of Regulations on Previously Approved Substitute Mortality Tables

The 2017 regulations also included rules regarding the use of plan-specific substitute mortality tables under section 430(h)(3)(C), which are set forth in § 1.430(h)(3)–2. Section 1.430(h)(3)–2(c)(6)(ii) provides for the early termination of the use of substitute mortality tables in certain circumstances, including in conjunction with a replacement of the mortality tables specified in § 1.430(h)(3)–1. Under § 1.430(h)(3)–2(c)(6)(ii)(E), the early termination in conjunction with a replacement of the generally applicable mortality tables will apply as of a date specified in guidance published in the Internal Revenue Bulletin. As stated in the preamble to the proposed regulations, the Treasury Department and the IRS generally will not require that the use of previously approved substitute mortality tables be terminated solely as a result of replacement of the generally applicable mortality tables.

Proposed regulations modifying the rules for approving plan-specific

substitute mortality tables are being published in the proposed rules section of this issue of the **Federal Register**. Those regulations are proposed to apply to plan years beginning on or after January 1, 2025. Until amendments to the plan-specific substitute mortality regulations are finalized—and an updated revenue procedure that reflects the final regulations is issued—the Treasury Department and the IRS will not require that any previously approved plan-specific substitute mortality tables be terminated pursuant to § 1.430(h)(3)–2(c)(6)(ii)(E).

Incorporation by Reference

Section 1.430(h)(3)–1(b)(1)(iii) of these regulations provides that the mortality improvement rates used to construct generational tables to be used for valuation dates occurring on or after January 1, 2024, are the 2024 Adjusted Scale MP–2021 Rates as described in the third paragraph of section B of the Summary of Comments and Explanation of Revisions in this preamble. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that agencies must discuss in the preamble to a rule or proposed rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. 1 CFR 51.5(b). The 2024 Adjusted Scale MP–2021 Rates may be found at www.irs.gov/retirement-plans/pension-plan-mortality-tables.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

Special Analyses

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities.

¹³ For example, it might be reasonable to apply an approach based on an equal weighting of male mortality rates and female mortality rates if the gender ratio of the portion of the plan population for whom male or female gender is identified is sufficiently close to 50 percent male and 50 percent female.

The only provision that increases regulatory burden is § 1.430(h)(3)–1(b), which generally requires the use of generational mortality tables. However, under § 1.430(h)(3)–1(c), small entities are not required to use generational mortality tables. Therefore, these regulations will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These regulations do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Pursuant to section 7805(f) of the Code, the proposed regulations that preceded these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

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

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S.F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Incorporation by reference, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.430(h)(3)–1 is revised to read as follows:

§ 1.430(h)(3)–1 Mortality tables used to determine present value.

(a) *Overview*—(1) *Standard mortality tables.* This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. These mortality tables include—

(i) Generational mortality tables described in paragraph (b) of this section; and

(ii) Static mortality tables for small plans described in paragraph (c) of this section.

(2) *Alternative tables*—(i) *Plan-specific mortality tables.* In lieu of using the mortality tables provided under this section, plan-specific substitute mortality tables are permitted to be used for purposes of section 430 pursuant to section 430(h)(3)(C), provided that the requirements of § 1.430(h)(3)–2 are satisfied.

(ii) *Disabled individuals.* In lieu of using the mortality tables provided under this section, mortality tables for disabled individuals are permitted to be used pursuant to section 430(h)(3)(D). These tables are provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(3) *Individuals not identified as either male or female.* The mortality tables in this section are applied for an individual based on the individual's gender. With respect to the portion of a plan's population for which male or female gender is not identified (for example, because an individual identifies as nonbinary or because the gender information for an individual is not available), the plan's actuary must use a reasonable approach for determining liability. Some reasonable approaches for these individuals include—

(i) Determining the liability for an individual for whom male or female gender is not identified as the weighted average of the liability calculated as if the individual were male and the liability calculated as if the individual were female, with an appropriate weighting that takes into account the

distribution of gender for individuals in the plan's population for whom gender is identified; and

(ii) Assigning either male or female status randomly to an individual for whom male or female gender is not identified in a manner that is expected to result in an appropriate proportion of males and females for the plan's population that takes into account the distribution of gender for individuals in the plan's population for whom gender is identified.

(b) *Generational mortality tables*—(1) *In general*—(i) *Construction of generational mortality tables.* The

generational mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1)(i) of this section are constructed from the base mortality tables described in paragraph (b)(1)(ii) of this section and the mortality improvement rates described in paragraph (b)(1)(iii) of this section, as adjusted in accordance with paragraph (b)(1)(v) of this section.

(ii) *Base mortality tables.* The base mortality tables are set forth in paragraph (d) of this section.

(iii) *Mortality improvement rates*—(A) *Mortality improvement rates for valuation dates occurring on or after January 1, 2024.* Except as otherwise provided in this paragraph (b)(1)(iii), the mortality improvement rates for valuation dates occurring on or after January 1, 2024, are the 2024 Adjusted Scale MP–2021 Rates as incorporated by reference pursuant to paragraph (b)(1)(iv)(A) of this section.

(B) [Reserved.]

(iv) *Incorporation by reference.* The material listed in this paragraph (b)(1)(iv) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the IRS and at the National Archives and Records Administration (NARA). Contact IRS at: IRS Office of Chief Counsel, Qualified Plans Branch 1, CC:EEE:EB:QP1, 1111 Constitution Avenue NW, Washington, DC 20224; (202) 317–6700; www.irs.gov/retirement-plans/pension-plan-mortality-tables. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from IRS: www.irs.gov/retirement-plans/pension-plan-mortality-tables.

(A) 2024 Adjusted Scale MP–2021 Rates, dated August 11, 2023.

(B) [Reserved]

(2) *Application of mortality improvement rates*—(i) *In general.* Under the generational mortality tables

described in this paragraph (b), the probability of an individual's death at a particular age in the future is determined as the individual's base mortality rate that applies at that age (that is, the applicable mortality rate from the tables set forth in paragraph (d) of this section for that age, gender, and status as an annuitant or a non-annuitant) multiplied by the cumulative mortality improvement factor for the individual's gender and for that age for the period from the base year for those mortality tables through the calendar year in which the individual is projected to reach the particular age. Paragraph (b)(3) of this section provides an example that shows how the base mortality tables in paragraph (d) of this section and the mortality improvement rates for valuation dates occurring

during 2024 are combined to determine projected mortality rates.

(ii) *Cumulative mortality improvement factor.* The cumulative mortality improvement factor for an age and gender for a period is the product of the annual mortality improvement factors for that age and gender for each year within that period.

(iii) *Annual mortality improvement factor.* The annual mortality improvement factor for an age and gender for a year is 1 minus the mortality improvement rate that applies for that age and gender for that year. If that annual mortality improvement rate is greater than 1 (corresponding to a negative mortality improvement rate), then the projected mortality rate for that age and gender for that year is greater than the projected mortality rate for the

same age and gender for the preceding year.

(3) *Example of calculation—(i) Calculation of mortality rate.* The mortality rate for 2024 that is applied to a male annuitant who is age 68 in 2024 is equal to the product of the mortality rate under paragraph (d) of this section for a male annuitant who was age 68 in 2012 (0.01418) and the cumulative mortality improvement factor calculated from the 2024 Adjusted Scale MP–2021 Rates for an age 68 male from 2012 to 2024. The cumulative mortality improvement factor for age 68 males for the period from 2012 to 2024 is 0.9827, and the mortality rate for 2024 for male annuitants who are age 68 in that year is 0.01393, as shown in the following table.

TABLE 1 TO PARAGRAPH (b)(3)(i)

Calendar year	Rate of mortality improvement from prior year to current year	Annual mortality improvement factor (1 – mortality improvement rate)	Cumulative mortality improvement factor	Mortality rate
2012	n/a	n/a	n/a	0.01418
2013	0.0071	0.9929	0.9929	.....
2014	0.0047	0.9953	0.9882	.....
2015	0.0029	0.9971	0.9854	.....
2016	0.0017	0.9983	0.9837	.....
2017	0.0009	0.9991	0.9828	.....
2018	0.0001	0.9999	0.9827	.....
2019	(0.0001)	1.0001	0.9828	.....
2020	0.0001	0.9999	0.9827	.....
2021	0.0000	1.0000	0.9827	.....
2022	0.0000	1.0000	0.9827	.....
2023	0.0000	1.0000	0.9827	.....
2024	0.0000	1.0000	0.9827	0.01393

(ii) *Probability of survival for an individual.* After the projected mortality rates are derived for each age for each year, the rates are used to calculate the present value of a benefit stream that depends on the probability of survival year-by-year. For example, for purposes of calculating the present value (for a 2024 valuation date) of future payments in a benefit stream payable for a male annuitant who is age 68 in 2024, the probability of survival for the annuitant is based on the mortality rate for a male annuitant who is age 68 in 2024 (0.01393), and the projected mortality rate for a male annuitant who will be age 69 in 2025 (0.01507), age 70 in 2026 (0.01635), and so on.

(4) *Use of the tables—(i) Separate tables for annuitants and non-annuitants.* Separate mortality tables are provided for use with respect to annuitants and non-annuitants. The non-annuitant mortality tables are applied to determine the probability of

survival for a non-annuitant for the period before the non-annuitant is projected to commence receiving benefits. The annuitant mortality tables are applied to determine the present value of benefits for each annuitant. In addition, the annuitant mortality tables are applied for each non-annuitant with respect to each assumed commencement of benefits for the period beginning with that assumed commencement. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a non-annuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit that has commenced and treated as a non-annuitant with respect to the balance of the benefit. In addition, with respect to

a beneficiary of a participant, the annuitant mortality tables apply for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality tables apply with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

(ii) *Examples of calculation using separate non-annuitant and annuitant tables.* With respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target is determined using the non-annuitant mortality tables for the period before the participant attains age 55 and using the annuitant mortality tables for the period ages 55 and above. Similarly, for a 45-year-old terminated vested participant who is projected to commence an annuity at

age 65, the funding target is determined using the non-annuitant mortality tables for the period before the participant attains age 65 and using the annuitant mortality tables for ages 65 and above.

(c) *Static mortality tables*—(1) *Availability of alternative tables for small plans*—(i) *In general.* As an alternative to the generational mortality tables defined in paragraph (b) of this section, static mortality tables may be used for a small plan. The static mortality tables described in this paragraph (c) are constructed from the separate non-annuitant and annuitant static mortality tables described in paragraph (c)(2)(i) of this section, combined using the procedure described in paragraph (c)(2)(ii) of this section.

(ii) *Definition of small plan.* For purposes of this paragraph (c), a small plan is defined as a plan with 500 or fewer total participants (including both active and inactive participants and beneficiaries of deceased participants) on the valuation date.

(iii) *Use of static mortality tables.* The static mortality tables that are used for a valuation date are the static mortality tables for the calendar year that includes the valuation date.

(iv) *Publication of mortality tables.* The static mortality tables for the 2024 calendar year are set forth in paragraph (e) of this section.

Note 1 to paragraph (c)(1)(iv): The static mortality tables for valuation dates occurring in later calendar years will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(2) *Development of static mortality tables*—(i) *Non-annuitant and annuitant mortality tables.* The non-annuitant and annuitant static mortality tables are determined using the base mortality tables described in paragraph (b)(1)(ii) of this section. The rates in those base mortality tables are adjusted using the

mortality improvement rates described in paragraph (b)(1)(iii) of this section, in accordance with the rules set forth in paragraph (c)(3) of this section.

(ii) *Combined static mortality tables.* The static mortality tables described in this paragraph (c) are constructed from the separate non-annuitant and annuitant static mortality tables pursuant to paragraph (c)(2)(i) of this section, blended using the weighting factors in paragraph (d) of this section. The weighting factors are applied to develop these combined static tables using the following equation: Combined mortality rate = [non-annuitant rate * (1 – weighting factor)] + [annuitant rate * weighting factor].

(3) *Projection of mortality improvements*—(i) *General rule.* Except as provided in paragraph (c)(3)(iii) of this section, the static mortality tables for a calendar year are determined by multiplying the applicable mortality rate for each age from the base mortality tables by both—

(A) The cumulative mortality improvement factor (determined under paragraph (b)(2)(ii) of this section) for the period from 2012 through that calendar year; and

(B) The cumulative mortality improvement factor (determined under paragraph (b)(2)(ii) of this section) for the period beginning in that calendar year and continuing beyond that calendar year for the number of years in the projection period described in paragraph (c)(3)(ii) of this section.

(ii) *Projection period for static mortality tables*—(A) *In general.* The projection period is 8 years for males and 9 years for females, as adjusted based on age as provided in paragraph (c)(3)(ii)(B) of this section.

(B) *Age adjustment.* For ages below 80, the projection period is increased by 1 year for each year below age 80. For ages above 80, the projection period is

reduced (but not below zero) by $\frac{1}{3}$ year for each year above 80.

(iii) *Fractional projection periods.* If for an age the number of years in the projection period determined under paragraph (c)(3)(ii) of this section is not a whole number, then the mortality rate for that age is determined by using linear interpolation between—

(A) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next lower whole number; and

(B) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next higher whole number.

(iv) *Example.* For example, at age 85 the projection period for a male is $6\frac{1}{3}$ years (8 years minus $\frac{1}{3}$ year for each of the 5 years above age 80). For a valuation date in 2024, the mortality rate in the static mortality table for an 85-year-old male is based on a projection of mortality improvement for $6\frac{1}{3}$ years beyond 2024. Under paragraph (c)(3)(iii) of this section, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2024 is $\frac{2}{3}$ times the projected mortality rate for a male annuitant that age in 2030 plus $\frac{1}{3}$ times the projected mortality rate for a male annuitant that age in 2031. Accordingly, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2024 is 0.08126 ($\frac{2}{3}$ times the projected mortality rate for an 85-year-old male annuitant in 2030 (0.08146) plus $\frac{1}{3}$ times the projected mortality rate for an 85-year-old male annuitant in 2031 (0.08086)).

(d) *Base mortality tables.* The following are the base mortality tables. The base year for these tables is 2012.

TABLE 2 TO PARAGRAPH (d)

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plan	Non-annuitant	Annuitant	Weighting factor for small plans
0	0.00650	0.00650	0.0000	0.00544	0.00544	0.0000
1	0.00045	0.00045	0.0000	0.00038	0.00038	0.0000
2	0.00030	0.00030	0.0000	0.00023	0.00023	0.0000
3	0.00022	0.00022	0.0000	0.00018	0.00018	0.0000
4	0.00019	0.00019	0.0000	0.00013	0.00013	0.0000
5	0.00016	0.00016	0.0000	0.00012	0.00012	0.0000
6	0.00014	0.00014	0.0000	0.00011	0.00011	0.0000
7	0.00013	0.00013	0.0000	0.00010	0.00010	0.0000
8	0.00011	0.00011	0.0000	0.00009	0.00009	0.0000
9	0.00009	0.00009	0.0000	0.00009	0.00009	0.0000
10	0.00008	0.00008	0.0000	0.00009	0.00009	0.0000
11	0.00009	0.00009	0.0000	0.00009	0.00009	0.0000

TABLE 2 TO PARAGRAPH (d)—Continued

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plan	Non-annuitant	Annuitant	Weighting factor for small plans
12	0.00013	0.00013	0.0000	0.00010	0.00010	0.0000
13	0.00017	0.00017	0.0000	0.00012	0.00012	0.0000
14	0.00022	0.00022	0.0000	0.00013	0.00013	0.0000
15	0.00028	0.00028	0.0000	0.00013	0.00013	0.0000
16	0.00034	0.00034	0.0000	0.00014	0.00014	0.0000
17	0.00040	0.00040	0.0000	0.00015	0.00015	0.0000
18	0.00046	0.00046	0.0000	0.00015	0.00015	0.0000
19	0.00053	0.00053	0.0000	0.00015	0.00015	0.0000
20	0.00056	0.00056	0.0000	0.00015	0.00015	0.0000
21	0.00056	0.00056	0.0000	0.00015	0.00015	0.0000
22	0.00056	0.00056	0.0000	0.00016	0.00016	0.0000
23	0.00055	0.00055	0.0000	0.00018	0.00018	0.0000
24	0.00055	0.00055	0.0000	0.00019	0.00019	0.0000
25	0.00054	0.00054	0.0000	0.00019	0.00019	0.0000
26	0.00054	0.00054	0.0000	0.00019	0.00019	0.0000
27	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
28	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
29	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
30	0.00055	0.00055	0.0000	0.00021	0.00021	0.0000
31	0.00055	0.00055	0.0000	0.00022	0.00022	0.0000
32	0.00056	0.00056	0.0000	0.00023	0.00023	0.0000
33	0.00058	0.00058	0.0000	0.00025	0.00025	0.0000
34	0.00059	0.00059	0.0000	0.00026	0.00026	0.0000
35	0.00061	0.00061	0.0000	0.00028	0.00028	0.0000
36	0.00063	0.00063	0.0000	0.00031	0.00031	0.0000
37	0.00065	0.00065	0.0000	0.00034	0.00034	0.0000
38	0.00068	0.00068	0.0000	0.00036	0.00036	0.0000
39	0.00071	0.00071	0.0000	0.00040	0.00040	0.0000
40	0.00074	0.00074	0.0000	0.00043	0.00043	0.0000
41	0.00077	0.00082	0.0008	0.00047	0.00049	0.0010
42	0.00081	0.00099	0.0016	0.00051	0.00061	0.0020
43	0.00086	0.00124	0.0024	0.00055	0.00078	0.0030
44	0.00091	0.00158	0.0032	0.00060	0.00101	0.0040
45	0.00097	0.00200	0.0040	0.00065	0.00130	0.0051
46	0.00105	0.00251	0.0047	0.00071	0.00165	0.0061
47	0.00113	0.00310	0.0055	0.00077	0.00206	0.0071
48	0.00123	0.00378	0.0063	0.00083	0.00252	0.0081
49	0.00134	0.00454	0.0071	0.00090	0.00304	0.0091
50	0.00147	0.00539	0.0079	0.00098	0.00362	0.0101
51	0.00161	0.00544	0.0140	0.00107	0.00426	0.0185
52	0.00177	0.00565	0.0209	0.00116	0.00495	0.0262
53	0.00194	0.00588	0.0302	0.00126	0.00500	0.0349
54	0.00213	0.00616	0.0430	0.00137	0.00512	0.0449
55	0.00234	0.00647	0.0898	0.00148	0.00517	0.0853
56	0.00257	0.00686	0.1676	0.00161	0.00522	0.1535
57	0.00281	0.00728	0.2153	0.00175	0.00528	0.1923
58	0.00308	0.00770	0.2635	0.00190	0.00561	0.2291
59	0.00338	0.00811	0.3144	0.00206	0.00601	0.2680
60	0.00369	0.00848	0.3821	0.00224	0.00643	0.3192
61	0.00403	0.00882	0.4579	0.00243	0.00690	0.3731
62	0.00441	0.00918	0.5935	0.00264	0.00743	0.4705
63	0.00481	0.00960	0.7153	0.00287	0.00796	0.5668
64	0.00525	0.01014	0.7764	0.00312	0.00859	0.6230
65	0.00573	0.01087	0.8454	0.00339	0.00928	0.7172
66	0.00636	0.01178	0.9002	0.00380	0.01003	0.8006
67	0.00706	0.01288	0.9275	0.00427	0.01089	0.8414
68	0.00784	0.01418	0.9431	0.00480	0.01192	0.8658
69	0.00870	0.01564	0.9547	0.00540	0.01309	0.8857
70	0.00967	0.01729	0.9642	0.00606	0.01444	0.9046
71	0.01073	0.01914	0.9732	0.00681	0.01597	0.9240
72	0.01192	0.02121	0.9791	0.00765	0.01770	0.9365
73	0.01323	0.02354	0.9823	0.00860	0.01967	0.9437
74	0.01469	0.02613	0.9847	0.00966	0.02192	0.9512
75	0.01632	0.02905	0.9868	0.01085	0.02445	0.9568
76	0.01812	0.03233	0.9889	0.01219	0.02727	0.9637
77	0.02012	0.03604	0.9906	0.01370	0.03042	0.9682
78	0.02234	0.04026	0.9920	0.01539	0.03391	0.9727
79	0.02480	0.04504	0.9935	0.01729	0.03775	0.9765

TABLE 2 TO PARAGRAPH (d)—Continued

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plan	Non-annuitant	Annuitant	Weighting factor for small plans
80	0.02754	0.05046	1.0000	0.01943	0.04198	1.0000
81	0.02989	0.05657	1.0000	0.02134	0.04663	1.0000
82	0.03460	0.06343	1.0000	0.02516	0.05178	1.0000
83	0.04166	0.07114	1.0000	0.03089	0.05754	1.0000
84	0.05108	0.07977	1.0000	0.03853	0.06401	1.0000
85	0.06285	0.08946	1.0000	0.04808	0.07132	1.0000
86	0.07698	0.10032	1.0000	0.05955	0.07954	1.0000
87	0.09346	0.11248	1.0000	0.07293	0.08879	1.0000
88	0.11229	0.12600	1.0000	0.08822	0.09936	1.0000
89	0.13348	0.14088	1.0000	0.10542	0.11124	1.0000
90	0.15703	0.15703	1.0000	0.12453	0.12453	1.0000
91	0.17401	0.17401	1.0000	0.13818	0.13818	1.0000
92	0.19151	0.19151	1.0000	0.15250	0.15250	1.0000
93	0.20936	0.20936	1.0000	0.16737	0.16737	1.0000
94	0.22742	0.22742	1.0000	0.18274	0.18274	1.0000
95	0.24569	0.24569	1.0000	0.19863	0.19863	1.0000
96	0.26415	0.26415	1.0000	0.21509	0.21509	1.0000
97	0.28281	0.28281	1.0000	0.23214	0.23214	1.0000
98	0.30169	0.30169	1.0000	0.24983	0.24983	1.0000
99	0.32077	0.32077	1.0000	0.26814	0.26814	1.0000
100	0.33996	0.33996	1.0000	0.28698	0.28698	1.0000
101	0.35910	0.35910	1.0000	0.30619	0.30619	1.0000
102	0.37794	0.37794	1.0000	0.32549	0.32549	1.0000
103	0.39633	0.39633	1.0000	0.34472	0.34472	1.0000
104	0.41415	0.41415	1.0000	0.36375	0.36375	1.0000
105	0.43131	0.43131	1.0000	0.38243	0.38243	1.0000
106	0.44771	0.44771	1.0000	0.40065	0.40065	1.0000
107	0.46329	0.46329	1.0000	0.41828	0.41828	1.0000
108	0.47800	0.47800	1.0000	0.43522	0.43522	1.0000
109	0.49181	0.49181	1.0000	0.45139	0.45139	1.0000
110	0.50000	0.50000	1.0000	0.46673	0.46673	1.0000
111	0.50000	0.50000	1.0000	0.48120	0.48120	1.0000
112	0.50000	0.50000	1.0000	0.49477	0.49477	1.0000
113	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
114	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
115	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
116	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
117	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
118	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
119	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
120	1.00000	1.00000	1.0000	1.00000	1.00000	1.0000

(e) *Static tables for 2024.* The following static mortality tables are used pursuant to paragraph (a)(1)(ii) of this section for determining present value or making any computation under section 430 with respect to valuation dates occurring during 2024.

TABLE 3 TO PARAGRAPH (e)

Age	Male	Female
0	0.00356	0.00306
1	0.00025	0.00022
2	0.00017	0.00013
3	0.00012	0.00010
4	0.00011	0.00008
5	0.00009	0.00007
6	0.00008	0.00007
7	0.00008	0.00006
8	0.00006	0.00005
9	0.00005	0.00005

TABLE 3 TO PARAGRAPH (e)—Continued

Age	Male	Female
10	0.00005	0.00006
11	0.00005	0.00006
12	0.00008	0.00006
13	0.00010	0.00008
14	0.00013	0.00008
15	0.00017	0.00008
16	0.00021	0.00009
17	0.00025	0.00010
18	0.00029	0.00010
19	0.00034	0.00010
20	0.00036	0.00010
21	0.00037	0.00010
22	0.00037	0.00011
23	0.00038	0.00013
24	0.00039	0.00014
25	0.00040	0.00014
26	0.00041	0.00015
27	0.00043	0.00016

TABLE 3 TO PARAGRAPH (e)—Continued

Age	Male	Female
28	0.00044	0.00016
29	0.00046	0.00017
30	0.00049	0.00018
31	0.00050	0.00019
32	0.00053	0.00021
33	0.00056	0.00023
34	0.00059	0.00024
35	0.00062	0.00026
36	0.00065	0.00029
37	0.00067	0.00031
38	0.00070	0.00032
39	0.00072	0.00035
40	0.00074	0.00037
41	0.00075	0.00039
42	0.00077	0.00041
43	0.00079	0.00043
44	0.00081	0.00045
45	0.00084	0.00048

TABLE 3 TO PARAGRAPH (e)—
Continued

Age	Male	Female
46	0.00088	0.00051
47	0.00092	0.00055
48	0.00098	0.00059
49	0.00104	0.00064
50	0.00113	0.00070
51	0.00124	0.00080
52	0.00137	0.00090
53	0.00153	0.00101
54	0.00173	0.00115
55	0.00206	0.00138
56	0.00253	0.00170
57	0.00296	0.00195
58	0.00344	0.00225
59	0.00397	0.00258
60	0.00458	0.00299
61	0.00523	0.00343
62	0.00615	0.00409
63	0.00703	0.00478
64	0.00774	0.00537
65	0.00861	0.00619
66	0.00957	0.00707
67	0.01054	0.00786
68	0.01163	0.00871
69	0.01283	0.00968
70	0.01419	0.01082
71	0.01575	0.01217
72	0.01750	0.01368
73	0.01949	0.01540
74	0.02175	0.01742
75	0.02433	0.01975
76	0.02729	0.02240
77	0.03069	0.02540
78	0.03460	0.02878
79	0.03912	0.03254
80	0.04442	0.03715
81	0.05008	0.04158
82	0.05649	0.04650
83	0.06372	0.05202
84	0.07192	0.05823
85	0.08126	0.06527
86	0.09180	0.07337
87	0.10364	0.08255
88	0.11688	0.09305
89	0.13148	0.10480
90	0.14733	0.11790
91	0.16404	0.13141
92	0.18111	0.14547
93	0.19847	0.16007
94	0.21588	0.17495
95	0.23319	0.19020
96	0.25152	0.20655
97	0.27010	0.22354
98	0.28899	0.24127
99	0.30836	0.25965
100	0.32788	0.27862
101	0.34742	0.29799
102	0.36672	0.31750
103	0.38574	0.33705
104	0.40436	0.35650
105	0.42191	0.37576
106	0.43897	0.39452
107	0.45520	0.41279
108	0.47064	0.43024
109	0.48536	0.44694
110	0.49448	0.46282
111	0.49552	0.47794
112	0.49656	0.49215
113	0.49756	0.49820
114	0.49870	0.49900
115	0.49975	0.49980
116	0.49990	0.49990

TABLE 3 TO PARAGRAPH (e)—
Continued

Age	Male	Female
117	0.49995	0.50000
118	0.50000	0.50000
119	0.50000	0.50000
120	1.00000	1.00000

(f) *Applicability date.* This section applies for valuation dates occurring on or after January 1, 2024.

■ **Par. 3.** Section 1.430(h)(3)–2 is amended by:

■ a. In paragraph (c)(3)(ii) deleting the text “§ 1.430(h)(3)–1(a)(2)(i)(E)” and adding in its place “§ 1.430(h)(3)–1(b)(2)(ii)”;

■ b. Revising paragraph (c)(6)(ii)(E); and

■ c. In paragraph (d)(4)(iii)(A):

■ i. Deleting the text “§ 1.430(h)(3)–1(a)(2)(i)(E)” and adding in its place “§ 1.430(h)(3)–1(b)(2)(ii)”;

■ ii. Deleting “2006” and adding in its place “2012”; and

■ iii. Deleting the text “§ 1.430(h)(3)–1(a)(2)(i)(C)” and adding in its place “§ 1.430(h)(3)–1(b)(1)(iii).”

The revision reads as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

* * * * *

(c) * * *

(6) * * *

(ii) * * *

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter) in conjunction with a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)–1 (other than changes to the mortality improvement rates under § 1.430(h)(3)–1(b)(1)(iii) or annual updates to the static mortality tables issued as noted in § 1.430(h)(3)–1(c)(1)(iv)).

* * * * *

■ **Par. 4.** Section 1.431(c)(6)–1 is revised to read as follows:

§ 1.431(c)(6)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* In accordance with section 431(c)(6)(D), the mortality assumptions that apply to a single-employer defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and (D) and §§ 1.430(h)(3)–1(a)(1) and (a)(2)(ii) are used to determine a multiemployer plan’s current liability for purposes of applying the rules of section 431(c)(6). For purposes of this paragraph (a), either the generational mortality tables

used pursuant to § 1.430(h)(3)–1(b) or the static mortality tables used pursuant to § 1.430(h)(3)–1(c) are permitted to be used without regard to whether the plan is a small plan. However, substitute mortality tables under §§ 1.430(h)(3)–1(a)(2)(i) and 1.430(h)(3)–2 are not permitted to be used for purposes of this paragraph (a).

(b) *Applicability date.* This section applies for valuation dates occurring on or after January 1, 2024.

■ **Par. 5.** Section 1.433(h)(3)–1 is revised to read as follows:

§ 1.433(h)(3)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* In accordance with section 433(h)(3)(B), the mortality assumptions that apply to a single-employer defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and (D) and §§ 1.430(h)(3)–1(a)(1) and (a)(2)(ii) are used to determine a cooperative and small employer charity (CSEC) plan’s current liability under section 433(h). For purposes of this paragraph (a), either the generational mortality tables used pursuant to § 1.430(h)(3)–1(b) or the static mortality tables used pursuant to § 1.430(h)(3)–1(c) are permitted to be used without regard to whether the plan is a small plan as defined in § 1.430(h)(3)–1(c)(1)(ii). However, substitute mortality tables under §§ 1.430(h)(3)–1(a)(2)(i) and 1.430(h)(3)–2 are not permitted to be used for purposes of this paragraph (a).

(b) *Applicability date.* This section applies for valuation dates occurring on or after January 1, 2024.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: October 4, 2023.

Lily L. Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2023–23267 Filed 10–19–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9982]

RIN 1545–BQ26

User Fees Relating to Enrolled Actuaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations amend existing regulations relating to user fees for enrolled actuaries. The final regulations increase both the enrollment and renewal of enrollment user fees for enrolled actuaries from \$250 to \$680. These regulations affect individuals who apply to become an enrolled actuary or seek to renew their enrollment. The Independent Offices Appropriation Act of 1952 authorizes charging user fees.

DATES:

Effective date: These regulations are effective on October 20, 2023.

Applicability date: For the applicability dates, see §§ 300.7(d) and 300.8(d).

FOR FURTHER INFORMATION CONTACT:

Carolyn M. Lee at 202–317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to 26 CFR part 300—User Fees. On October 5, 2022, a notice of proposed rulemaking (NPRM) (REG–100719–21) and notice of public hearing was published in the **Federal Register** (87 FR 60357). The NPRM proposed amending the regulations relating to the user fees for enrolled actuaries. The document proposed increasing the amount of the user fee for both the new enrollment and renewal of enrollment for enrolled actuaries from \$250 to \$680 per enrollment application or renewal application. The NPRM contained a detailed explanation of the legal background and user fee calculations regarding the amendment to these regulations.

Four comments were submitted in response to the notice of proposed rulemaking. There were no requests to speak at the scheduled public hearing. Consequently, the public hearing was cancelled (87 FR 80109). After consideration of the written comments, the Department of the Treasury (Treasury Department) and the IRS have decided to adopt without modification the regulations proposed by the notice of proposed rulemaking.

Summary of Comments

The four comments submitted in response to the notice of proposed rulemaking are available at <https://www.regulations.gov> or upon request.

1. Comments Not Seeking Modification or Clarification of the User Fee

Some comments did not address modification or clarification of the user fee.

One comment expressed concern about the applicability date of the user fees for enrolled actuaries who apply to renew their enrollment for the 2023–2025 enrollment cycle. The proposed regulation amending 26 CFR 300.8, Renewal of enrollment of enrolled actuary fee, stated the effective date would be 30 days after the regulation is published as a final regulation in the **Federal Register**. The comment noted that applications for the enrollment renewal would be available in early January 2023 to enrolled actuaries seeking to renew their enrollment for the 2023–2025 enrollment cycle, and renewal of enrollment applications and fees must be submitted by March 1, 2023, to be effective beginning April 1, 2023. These final regulations are being published after the close of the 2023 season for timely renewal of enrollment. Consequently, the \$250 renewal of enrollment user fee in effect on January 1, 2023, was in effect throughout the timely renewal season that closed March 1, 2023.

Another comment recommended adding a provision to the user fee regulations to eliminate the in-person continuing education formal program requirements. Continuing education requirements for enrolled actuaries are governed by 20 CFR 901.11. The comment regarding continuing education requirements for enrolled actuaries is outside the scope of these regulations.

In addition, a comment recommended that the Joint Board for the Enrollment of Actuaries (Joint Board) consider approaches to make its cost structure more efficient, presenting as examples adopting a longer enrollment cycle, and making the continuing professional education (CPE) audit process more efficient for enrolled actuaries and for qualifying sponsors of enrolled actuary continuing education. These regulations relate to the methodology used to determine user fees for new enrollment and renewal of enrollments. The operation of the Joint Board is outside the scope of these regulations. Nonetheless, the IRS continually looks for program efficiencies, which it takes into consideration during the enrolled actuary user fee biennial review.

2. Comments Seeking Modification or Clarification of the User Fee

The summary of comments below addresses those comments that make recommendations concerning, or seeking clarification of, the user fees set forth in the proposed regulations relating to the user fees for new enrollments and renewal of enrollments for enrolled actuaries.

A. Enrolled Actuary Enrollment Processes Must Be Financially Self-Sustaining

One comment questioned why the user fee is calculated based on the number of enrolled actuary applicants. Enrolled actuary applicants seeking to be enrolled as new enrolled actuaries or to renew their enrolled actuary enrollment are the principal beneficiaries of the services provided by the Joint Board; that is, the enrolled actuary new enrollment and renewal of enrollment processes conducted by the IRS Return Preparer Office (RPO) under the oversight of the Joint Board. An individual who has been granted new enrollment or renewal of enrollment as an enrolled actuary by the Joint Board may perform pension actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) Public Law 93–406, Title III, section 3042, Sept. 2, 1974, 88 Stat. 1002, and practice before the IRS as provided by the rules governing practice before the IRS, published in 31 CFR subtitle A, part 10, and reprinted as Treasury Department Circular No. 230 (Circular 230). Enrollment confers special benefits on individuals who are enrolled actuaries beyond those that accrue to the general public.

The Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services the agency provides (user fees). The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The IOAA provides that user fee regulations are subject to policies prescribed by the President. The policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25 (OMB Circular A–25), 58 FR 38142 (July 15, 1993).

Section 6a(1) of OMB Circular A–25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service (unless the agency requests, and the OMB grants, an exception to the full-cost requirement). An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services.

In accordance with OMB Circular A–25, the RPO completed its 2021 biennial review of the enrollment and renewal of enrollment user fees associated with enrolled actuaries. As discussed in the notice of proposed rulemaking, during its review, the RPO took into account

increases in labor, benefits, and overhead costs incurred in connection with providing enrollment services to individuals who enroll or renew enrollment as enrolled actuaries since the user fee was promulgated in 2007. The costs include activities related to verifying that an individual meets the requirements for enrollment or renewal of enrollment as an enrolled actuary. The RPO also took into account a reallocation of certain labor costs in their methodology to include costs associated with certain human resource matters, formalizing policies and procedures, and other administrative support. The RPO followed the generally accepted accounting principles established by the Federal Accounting Standards Advisory Board.

As required by section 6a(1) of OMB Circular A-25, the costs allocated to the enrollment and renewal processes for enrolled actuaries are borne in full by the identifiable group of actuaries who apply for new enrollment and renewal of enrollment services. Accordingly, the number of enrolled actuary applicants is used by the RPO to determine the per-applicant user fee. As described in the proposed regulations, to arrive at the total cost per application, the IRS divided the estimated three-year total of enrolled actuary costs by the total volume of applications expected over the same three-year period. Based on the number of applicants, the full cost of administering the enrollment and renewal for enrollment processes for enrolled actuaries increased from \$250 to \$680 per enrollment.

B. Justification for the Increase in User Fees

Several comments were received expressing concern about the amount by which the user fees increased, and sought clarification for what caused the increase. One commenter requested an explanation of the difference in outcomes between the 2019 biennial review when user fees were not increased and the 2021 biennial review. Commenters also inquired about the factors causing the reallocation of RPO's human resources, resulting in RPO's correction during the 2021 biennial review of the average time allocated to enrolled actuary enrollment and renewal of enrollment processes from 40 percent to 65 percent. Another commenter, questioning the increase in enrollment user fees between the 2019 biennial review and the 2021 biennial review, stated for comparison that the Bureau of Labor Statistics (BLS) Employment Cost Index (ECI) for private industry worker wages and salaries showed an increase of no more than 10

percent to 15 percent from the 2020–2022 enrollment cycle to the 2023–2025 enrollment cycle. The same commenter observed that many of the intellectual capital services the Treasury Department and the IRS provide across the organization are not directly relevant to enrolled actuaries and the services they provide to qualified pension plans. In the same vein, a commenter expressed an incorrect belief that the enrolled actuary enrollment user fees include costs not attributable to the enrolled actuary program for government employees who, among their overall responsibilities not allocated to the enrolled actuary program, have duties including working for the Joint Board.

More specifically, a commenter questioned the accuracy of the IRS's determination that 65 percent of four RPO employees' time is dedicated to enrollment activities during the three-year enrollment cycle, given the unevenness in enrollments and renewals during each of the three years. The 2021 biennial review was based on 214 applications in 2018, 132 applications in 2019, and 3,584 applications in 2020. According to this commenter, if the volume of applications is uneven, the percentage of time IRS employees spend working on enrollment activities would be similarly uneven and would not average 65 percent over the three-year enrollment cycle. Another commenter requested information about the change in the number of applicants relative to prior years. The commenter posited that if enrollments were decreasing, enrollment processes costs also should decrease because there are fewer applications to review. Enrolled actuary total new and renewal of enrollment applications have declined. The 2021 biennial review, based on fiscal years 2018, 2019, and 2020, showed approximately 450 fewer enrolled actuary applicants compared to the previous cycles.

These comments generally reflect an assumption that the enrolled actuary enrollment fees are solely attributable to enrollment applications processing. As explained in the proposed regulations, the methodology for calculating full costs associated with new and renewal of enrollment applications was updated during the 2021 biennial review. Prior costing analyses only considered the time associated with the actual processing of new and renewal of enrollment applications. However, application processing is only one aspect of the cost analysis. The current increase in user fees was, in part, the result of the RPO determining that the

methodology previously used to compute labor allocations was outdated and did not capture the full costs associated with administering enrolled actuary enrollment and renewal of enrollment. Under the previous methodology, the salaries and benefits of RPO staff supporting the new and renewal of enrollment of enrolled actuaries were computed at 40 percent of four RPO staff members' salaries and benefits, with associated overhead. To more accurately calculate the full RPO costs directly associated with the enrolled actuary enrollment program, the updated costing analysis accounts for not only the time and resources involved in application processing, but also the additional time and resources spent to administer the enrolled actuary program. These activities continue throughout the three-year enrollment cycle even though enrollment application volume fluctuates. The RPO's responsibilities with respect to the enrolled actuary program beyond application processing include conducting yearly tax compliance and continuing professional education (CPE) audits of enrolled actuaries, communicating with inactive enrolled actuaries, implementing regulatory improvements, investigating discipline cases, and supporting the work of Joint Board Advisory Committee members.

The 2021 biennial review established that four RPO employees devoted an average of 65 percent of their time over the three-year enrollment cycle to enrolled actuary enrollment activities. Accordingly, the correct allocation of RPO's labor costs to the enrolled actuary enrollment and renewal of enrollment processes was 65 percent of the four RPO staff members' time, which was used to calculate the user fees in these final regulations. More specifically, during the 2021 biennial review, the IRS projected the estimated costs of direct labor and benefits based on the actual salary and benefits of the four employees who devote time to conducting enrolled actuary enrollment and renewal of enrollment processes, reduced to reflect the percentage of time each individual actually spends on those activities. The RPO's managers estimated the percentage of time these employees devoted to conducting enrollment activities based on the managers' knowledge of program assignments. In addition, the full costs of related oversight and support costs, plus travel, training, and supplies, were included in the 2021 biennial review user fee computations. These costs had not been included in the user fee computation previously.

Applying the refined methodology and including full costs in the 2021 biennial review resulted in the increase of \$430 in new and renewal of enrollment user fees for the three-year enrollment cycle to \$680, or \$143.33 per year.

One commenter appeared to not understand that the change in the internal allocation methodology applied only to the RPO staff who actually provided the enrollment services. This commenter observed that a change in the Treasury Department's and IRS's internal allocation methodology for human resources should not result in a significant increase in enrolled actuary user fees because many of the services the agencies provide are not directly relevant to enrolled actuaries. Human resource allocation throughout the Treasury Department was not used as a cost factor attributed to the four RPO staff providing enrollment services. Neither were costs associated with agency-wide IRS human resource allocation; instead, those costs were one of several indirect costs used to compute the overhead rate included in the rate calculation methodology as described in the notice of proposed rulemaking.

C. Impact of User Fees on New and Renewal of Enrollments

Two comments questioned whether increasing user fees may discourage individuals from enrolling as enrolled actuaries or renewing their enrollment. These commenters were concerned that a decline in the number of enrolled actuaries could minimize the competition for services, which could result in increased costs passed to the consumers of services provided by enrolled actuaries. One commenter queried whether there had been consideration given to phasing in the increased user fees and implementing a cap on the user fees. The same commenter stated that, in circumstances of declining enrolled actuary enrollment, the remaining enrolled actuaries might in effect be penalized by substantially increasing user fees. This commenter observed that requiring enrolled actuaries to bear the full cost of enrollment processing may be to the detriment, instead of the benefit, of the enrollment of actuaries.

The Treasury Department and the IRS recognize the valuable service enrolled actuaries provide to taxpayers. As discussed in section 2.A of the Summary of Comments, OMB Circular A-25 states that when a service offered by a Federal agency provides special benefits to identifiable recipients beyond those accruing to the general

public, the agency will establish a user fee to recover the full cost to the government of providing the service (unless the agency requests, and the OMB grants, an exception to the full-cost requirement). Also discussed in section 2.A of the Summary of Comments, the IRS confers benefits on individuals who are enrolled actuaries beyond those that accrue to the general public by allowing them to perform pension actuarial services under ERISA and to practice before the IRS. The Treasury Department and the IRS comply with OMB Circular A-25 by charging user fees to recover the full cost of overseeing the enrollment and renewal of enrollment processes. Based on the 2021 biennial review, the RPO determined that the full cost of administering the enrolled actuary new and renewal of enrollment processes increased from \$250 to \$680 per enrollment application for the three-year enrollment period. The fee is an increase of \$143.33 per year for the period. The Treasury Department and the IRS have not requested an exception from the OMB because there is no data that indicates the user fee for new enrollment or renewal of enrollment is cost prohibitive or that any other condition exists that justifies an exception.

D. Applicability of OMB Circular A-25

One commenter queried whether there should be an exemption from the user fee in certain circumstances, as permitted by OMB Circular A-25. As an example, the commenter described a scenario when enrolled actuary status is required to qualify for employment but the employment position itself does not involve providing pension actuarial services or representing a taxpayer before the IRS. According to the commenter, the enrolled actuary in this scenario should not be subject to the user fee because the employer does not benefit from the performance of the particular services the enrolled actuary status permits. This is a misunderstanding of the role "benefit" plays in the OMB Circular A-25 requirement to charge a user fee. As explained in the notice of proposed rulemaking and this preamble, the user fee is required to recover the full cost of providing the service of new and renewal of enrollment to an individual who has been approved by the Joint Board to perform actuarial services required under ERISA and to represent clients in certain circumstances before the IRS. This service confers special benefits to the enrolled actuary. Any third-party benefit, such as to an enrolled actuary's employer or clients,

is not a consideration with respect to the OMB Circular A-25 requirement. The scenario presented by the commenter does not justify an exception to the full-cost recovery requirement.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, *Review of Treasury Regulations under Executive Order 12866* (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Regulatory Flexibility Act (RFA)

The notice of proposed rulemaking included an initial regulatory flexibility analysis (IRFA). No comments pertaining to the analysis were received. Based on the IRFA, the Treasury Department and the IRS determined the rule is not expected to have a significant economic impact on a substantial number of small entities and a final regulatory flexibility analysis is not required. As discussed in the IRFA, the regulations affect actuaries who apply for enrollment as an enrolled actuary or renewal of enrollment with the Joint Board. Only individuals, not businesses, can apply for new enrollment or to renew enrolled actuary certification. Therefore, the economic impact of these regulations, an increase of \$143.33 per year for the three-year enrollment period, on any small entity generally will be the result of an individual actuary owning a small business, or a small business employing an actuary and requiring the individual to apply for enrolled actuary status or renew as an enrolled actuary with the Joint Board. Pursuant to the RFA (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on its impact on small business. The Chief Counsel for the Office of Advocacy of the SBA did not provide any comments.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may

result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

V. Congressional Review Act

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

Drafting Information

The principal author of these regulations is Carolyn M. Lee, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, Use fees.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 300 as follows:

PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.7 is amended by revising paragraphs (b) and (d) to read as follows:

\$ 300.7 Enrollment of enrolled actuary fee.

* * * * *

(b) *Fee.* The fee for initially enrolling as an enrolled actuary with the Joint

Board for the Enrollment of Actuaries is \$680.00.

* * * * *

(d) *Applicability date.* This section is applicable beginning November 20, 2023.

■ **Par. 3.** Section 300.8 is amended by revising paragraphs (b) and (d) to read as follows:

\$ 300.8 Renewal of enrollment of enrolled actuary fee.

* * * * *

(b) *Fee.* The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$680.00.

* * * * *

(d) *Applicability date.* This section is applicable beginning November 20, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: October 4, 2023.

Lily L. Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2023–23301 Filed 10–19–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0797]

RIN 1625–AA00

Safety Zone; Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Cumberland River extending from mile marker 190 through 191. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by aerial operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley.

DATES: This rule is effective from 7 a.m. on October 21, 2023 through 6 p.m. on October 22, 2023. This rule will be enforced from 7 a.m. through 6 p.m. daily during the effective period.

ADDRESSES: To view documents mentioned in this preamble as being

available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0797 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Joshua Carter, MSD Nashville, U.S. Coast Guard; telephone 615–736–5421, email Joshua.D.Carter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond and repair to the potential safety hazards associated with the aerial operations. It is impracticable to publish an NPRM because we must establish this safety zone by October 21st, 2023. An aerial conductor will be replaced by Nashville Electric Service between mile markers 190–191 which could cause a hazard to navigation on the Cumberland River. The safety zone must be established to protect people and vessels associated with and resulting from the aerial operations and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This safety zone may include closures or navigation restrictions and requirements that are vital to maintain safe navigation on the Cumberland River during aerial operations.

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

the potential safety hazards associated with the aerial operations starting October 21, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the aerial operations from October 21 and 22, 2023, will be a safety concern for anyone within mile marker 190–191. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the aerial operations are taking place.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 7 a.m. until 6 p.m. on October 21 and 22, 2023. The safety zone will cover all navigable waters within mile markers 190–191. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the aerial operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the location of the event on the Cumberland River lasting only 11 hours daily for two days. Vessels will be able to contact the COTP for instructions on how to transit around the zone safely.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider

the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, this rule will only last 11 hours, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zone lasting only 11 hours a day, for two days, that will prohibit entry within mile marker 181–183 of the Cumberland River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T08–0797 to read as follows:

§ 165.T08–0797 Safety Zone; Cumberland River, Nashville, TN.

(a) *Location.* The following area is a safety zone: All navigable waters of the Cumberland River from Mile Marker 190 through 191, extending the entire width of the river.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by 502–779–5422 or on VHR–FM channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. through 6 p.m. daily on October 21, 2023 through October 22, 2023.

Dated: October 16, 2023.

H.R. Mattern,

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

[FR Doc. 2023–23236 Filed 10–19–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 87, 1031, and 1068**

[EPA–HQ–OAR–2022–0389; FRL–5934–02–OAR]

RIN 2060–AT10

Finding That Lead Emissions From Aircraft Engines That Operate on Leaded Fuel Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: In this action, the Administrator finds that lead air pollution may reasonably be anticipated to endanger the public health and welfare within the meaning of the Clean Air Act. The Administrator also finds that engine emissions of lead from certain aircraft cause or contribute to the lead air pollution that may reasonably be anticipated to endanger public health and welfare under the Clean Air Act.

DATES: These findings are effective on November 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0389. All documents in the docket are listed in the <https://www.regulations.gov> website. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the EPA Air and Radiation Docket and Information Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ken Davidson, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency; telephone number: (415) 972–3633; email address: davidson.ken@epa.gov.

SUPPLEMENTARY INFORMATION:**A. General Information**

Does this action apply to me?

Regulated entities: These final findings do not themselves apply new requirements to entities other than the EPA and the FAA. With respect to

requirements for the EPA and the FAA, as indicated in the proposal for this action, if the EPA issues final findings that emissions of lead from certain classes of engines used in certain aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the EPA then becomes subject to a duty to propose and promulgate emission standards pursuant to section 231 of the Clean Air Act. Upon EPA's issuance of regulations, the FAA shall prescribe regulations to ensure compliance with the EPA's emission standards pursuant to section 232 of the Clean Air Act. In contrast to the findings, those future standards would apply to and have an effect on other entities outside the Federal Government. In addition, pursuant to 49 U.S.C. 44714, the FAA has a statutory mandate to prescribe standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions which the EPA has found endanger public health or welfare under section 231(a) of the Clean Air Act. In issuing these final findings, the EPA is making such a finding for emissions of lead from engines in covered aircraft.

The classes of aircraft engines and of aircraft relevant to this final action are referred to as “covered aircraft engines” and as “covered aircraft,” respectively throughout this document. Covered aircraft engines in this context means any aircraft engine that is capable of using leaded aviation gasoline. Covered aircraft in this context means all aircraft and ultralight vehicles¹ equipped with covered engines. Covered aircraft would, for example, include smaller piston-engine aircraft such as the Cessna 172 (single-engine aircraft) and the Beechcraft Baron G58 (twin-engine aircraft), as well as the largest piston-engine aircraft such as the Curtiss C–46 and the Douglas DC–6. Other examples of covered aircraft would include rotorcraft,² such as the Robinson R44 helicopter, light-sport aircraft, and ultralight vehicles equipped with piston engines. Because the majority of covered aircraft are piston-engine powered, this document focuses on those aircraft (in some contexts the EPA refers to these same engines as reciprocating engines). All such references and examples used in this document are covered aircraft as defined in this paragraph.

¹ The FAA regulates ultralight vehicles under 14 CFR part 103.

² Rotorcraft encompass helicopters, gyroplanes, and any other heavier-than-air aircraft that depend principally for support in flight on the lift generated by one or more rotors.

Entities potentially interested in this final action include those that manufacture and sell covered aircraft

engines and covered aircraft in the United States and those who own or operate covered aircraft. Categories that

may be affected by a future regulatory action include, but are not limited to, those listed here:

Category	NAICS ^a code	SIC ^b code	Examples of potentially affected entities
Industry	3364412	3724	Manufacturers of new aircraft engines.
Industry	336411	3721	Manufacturers of new aircraft.
Industry	481219	4522	Aircraft charter services (<i>i.e.</i> , general purpose aircraft used for a variety of specialty air and flying services). Aviation clubs providing a variety of air transportation activities to the general public.
Industry	611512	8249 and 8299	Flight training.

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this final action. This table lists examples of the types of entities that the EPA is now aware of that could potentially have an interest in this final action. Other types of entities not listed in the table could also be interested and potentially affected by subsequent actions at some future time. If you have any questions regarding the scope of this final action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

B. Children's Health

Children are generally more vulnerable to environmental exposures and/or the associated health effects, and therefore more at risk than adults. These risks to children may arise because infants and children generally eat more food, drink more water and breathe more air than adults do, relative to their size, and consequently they may be exposed to relatively higher amounts of contaminants. In addition, normal childhood activity, such as putting hands in mouths or playing on the ground, can result in exposures to contaminants that adults do not typically have. Furthermore, environmental contaminants may pose health risks specific to children because children's bodies are still developing. For example, during periods of rapid growth such as fetal development, infancy and puberty, their developing systems and organs may be more easily harmed.³

Protecting children's health from environmental risks is fundamental to the EPA's mission. This action is subject to EPA's Policy on Children's Health because this action has considerations for human health.⁴ Consistent with this

policy this document includes discussion and analysis that is focused particularly on children including early life exposure (the lifestages from conception, infancy, early childhood and through adolescence until 21 years of age) and lifelong health. For example, as described in section IV. of this document, the scientific evidence has long been established demonstrating that young children (due to rapid growth and development of the brain) are vulnerable to a range of neurological effects resulting from exposure to lead. Low levels of lead in young children's blood have been linked to adverse effects on intellect, concentration, and academic achievement, and as the EPA has previously noted "there is no evidence of a threshold below which there are no harmful effects on cognition from [lead] exposure."⁵ Evidence suggests that while some neurocognitive effects of lead in children may be transient, some lead-related cognitive effects may be irreversible and persist into adulthood, potentially contributing to lower educational attainment and financial well-being.⁶ The 2013 Lead Integrated Science Assessment notes that in epidemiologic studies, postnatal (early childhood) blood lead levels are consistently associated with cognitive function decrements in children and adolescents.⁷ In addition, in section II.A.5. of this document, we describe the number of children living near and attending school near airports and

Available at <https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf>. Children's environmental health includes conception, infancy, early childhood and through adolescence until 21 years of age.

⁵ EPA (2013) ISA for Lead. Executive Summary "Effects of Pb Exposure in Children." pp. lxxxvii–lxxxviii. EPA/600/R–10/075F, 2013. See also, National Toxicology Program (NTP) (2012) NTP Monograph: Health Effects of Low-Level Lead. Available at <https://ntp.niehs.nih.gov/go/36443>.

⁶ EPA (2013) ISA for Lead. Executive Summary "Effects of Pb Exposure in Children." pp. lxxxvii–lxxxviii. EPA/600/R–10/075F, 2013.

⁷ EPA (2013) ISA for Lead. Section 1.9.4. "Pb Exposure and Neurodevelopmental Deficits in Children." p. I–75. EPA/600/R–10/075F, 2013.

provide a proximity analysis of the potential for greater representation of children in the near-airport environment compared with neighboring areas.

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³ EPA (2006) A Framework for Assessing Health Risks of Environmental Exposures to Children. EPA, Washington, DC, EPA/600/R–05/093F, 2006.

⁴ EPA. Memorandum: Issuance of EPA's 2021 Policy on Children's Health. October 5, 2021.

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I. Executive Summary

Pursuant to section 231(a)(2)(A) of the Clean Air Act (CAA or Act), the Administrator finds that emissions of lead from covered aircraft engines cause or contribute to lead air pollution that may reasonably be anticipated to endanger public health and welfare. Covered aircraft include, for example, smaller piston-engine aircraft such as the Cessna 172 (single-engine aircraft) and the Beechcraft Baron G58 (twin-engine aircraft), as well as the largest piston-engine aircraft such as the Curtiss C-46 and the Douglas DC-6. Other examples of covered aircraft include rotorcraft, such as the Robinson R44 helicopter, light-sport aircraft, and ultralight vehicles equipped with piston engines.

For purposes of this action, the EPA defines the “air pollution” referred to in section 231(a)(2)(A) of the CAA as lead, which we also refer to as the lead air pollution in this document.⁸ In finding that the lead air pollution may reasonably be anticipated to endanger the public health and welfare, the EPA relies on the extensive scientific evidence critically assessed in the 2013 Integrated Science Assessment for Lead (2013 Lead ISA) and the previous Air Quality Criteria Documents (AQCDs) for Lead, which the EPA prepared to serve as the scientific foundation for periodic reviews of the National Ambient Air

Quality Standards (NAAQS) for lead.^{9 10 11 12}

Further, for purposes of this action, the EPA defines the “air pollutant” referred to in CAA section 231(a)(2)(A) as lead, which we also refer to as the lead air pollutant in this document.¹³ Accordingly, the Administrator finds that emissions of the lead air pollutant from covered aircraft engines cause or contribute to the lead air pollution that may reasonably be anticipated to endanger public health and welfare under CAA section 231(a)(2)(A).

This final action follows the Administrator's proposed findings¹⁴ and includes responses to public comments submitted to the EPA on that proposal. The proposal was posted on the EPA website on October 7, 2022, and published in the **Federal Register** on October 17, 2022. The EPA held a virtual public hearing on November 1, 2022, and the public comment period closed on January 17, 2023. During the public comment period, we received more than 53,000 comments.¹⁵ The EPA received late comments, and to the extent feasible we have responded to those comments in the Response to Comments document for this action.

A broad range of stakeholders provided comments, including state and local governments; non-governmental organizations; industry trade associations representing aircraft engine and airframe manufacturers, fuel producers, fuel distributors, fuel providers, the helicopter industry, and aircraft owners and operators; environmental organizations; environmental justice organizations; one Tribe; private citizens; and others. In this notice for this final action, we summarize and respond to certain issues raised by commenters, and we

⁹ EPA (2013) ISA for Lead. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

¹⁰ EPA (2006) Air Quality Criteria for Lead. EPA, Washington, DC, EPA/600/R-5/144aF, 2006.

¹¹ EPA (1986) Air Quality Criteria for Lead. EPA, Washington, DC, EPA-600/8-83/028aF-dF, 1986.

¹² EPA (1977) Air Quality Criteria for Lead. EPA, Washington, DC, EPA-600/8-77-017 (NTIS PB280411), 1977.

¹³ As noted in section V.A. of this document, the lead air pollutant can occur as elemental lead or in lead-containing compounds.

¹⁴ EPA (2022) Proposed Finding that Lead Emissions from Aircraft Engines that Operate on Leaded Fuel Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare 87 FR 62753 (October 17, 2022).

¹⁵ Of these comments, more than 600 were unique letters, some of which provided data and other information for EPA to consider; the remaining comments were mass mailers sponsored by four different organizations, all of which urged the EPA to take action to finalize the findings and/or to take regulatory action to eliminate lead emissions from aircraft operating on leaded avgas.

provide responses to the remainder of comments in the Response to Comments document that is available in the public docket for this action.¹⁶

Section II. of this action includes an overview and background information that is helpful to understanding the source sector in the context of this action, a brief summary of some of the Federal actions focused on reducing lead exposures, and a brief summary of the petitions for rulemaking regarding lead emissions from aircraft engines. Section III. of this document provides the legal framework for this action, section IV. provides the EPA's final determination on the endangerment finding, section V. provides the EPA's final determination on the cause or contribute finding, and section VI. discusses various statutory authorities and executive orders.

II. Overview and Context for This Final Action

We summarize here background information that provides additional context for this final action. This includes information on the population of aircraft that have piston engines, information on the use of leaded aviation gasoline (avgas) in covered aircraft, physical and chemical characteristics of lead emissions from engines used in covered aircraft, concentrations of lead in air from these engine emissions, and the fate and transport of lead emitted by engines used in such aircraft. We also include here an analysis of populations residing near and attending school near airports and an analysis of potential environmental justice implications with regard to residential proximity to runways where covered aircraft operate. This section ends with a description of a broad range of Federal actions to reduce lead exposure from a variety of environmental media and a brief summary of citizen petitions for rulemaking regarding lead emissions from covered aircraft and the EPA responses.

A. Background Information Helpful To Understanding This Final Action

This final action draws extensively from the EPA's scientific assessments for lead, which are developed as part of the EPA's periodic reviews of the air quality criteria¹⁷ for lead and the lead

¹⁶ U.S. EPA, “Finding that Lead Emissions from Aircraft Engines that Operate on Leaded Fuel Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare—Response to Comments,” Docket EPA-HQ-OAR-2022-0389.

¹⁷ Under section 108(a)(2) of the CAA, air quality criteria are intended to “accurately reflect the latest

⁸ As noted in section IV.A. of this document, the lead air pollution can occur as elemental lead or in lead-containing compounds.

NAAQS.¹⁸ These scientific assessments provide a comprehensive review, synthesis, and evaluation of the most policy-relevant science that builds upon the conclusions of previous assessments. In the information that follows, we discuss and describe scientific evidence summarized in the most recent assessment for lead, the 2013 Lead ISA,^{19,20} as well as information summarized in previous assessments, including the 1977, 1986, and 2006 AQCDs.^{21,22,23}

As described in the 2013 Lead ISA, lead emitted to ambient air is transported through the air and is distributed from air to other environmental media through deposition.²⁴ Lead emitted in the past can remain available for environmental or human exposure for an extended time in some areas.²⁵ Depending on the environment where it is deposited, it may to various extents be resuspended into the ambient air, integrated into the media on which it deposits, or

transported in surface water runoff to other areas or nearby waterbodies.²⁶ Lead in the environment today may have been airborne yesterday or emitted to the air long ago.²⁷ Over time, lead that was initially emitted to air can become less available for environmental circulation by sequestration in soil, sediment and other reservoirs.²⁸

The multimedia distribution of lead emitted into ambient air creates multiple air-related pathways of human and ecosystem exposure. These pathways may involve media other than air, including indoor and outdoor dust, soil, surface water and sediments, vegetation and biota. The human exposure pathways for lead emitted into air include inhalation of ambient air or ingestion of food, water or other materials, including dust and soil, that have been contaminated through a pathway involving lead deposition from ambient air.²⁹ Ambient air inhalation pathways include both inhalation of air outdoors and inhalation of ambient air that has infiltrated into indoor environments.³⁰ The air-related ingestion pathways occur as a result of lead emissions to air being distributed to other environmental media, where humans can be exposed to it via contact with and ingestion of indoor and outdoor dusts, outdoor soil, food and drinking water.

The scientific evidence documents exposure to many sources of lead emitted to the air that have resulted in higher blood lead levels, particularly for people living or working near sources, including stationary sources, such as mines and smelters, and mobile sources, such as cars and trucks when lead was a gasoline additive.^{31,32,33,34,35,36}

²⁶ EPA (2013) ISA for Lead. Section 6.2. "Fate and Transport of Pb in Ecosystems." p. 6–62. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷ EPA (2013) ISA for Lead. Section 2.3. "Fate and Transport of Pb." p. 2–24. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸ EPA (2013) ISA for Lead. Section 1.2.1. "Sources, Fate and Transport of Ambient Pb;" p. 1–6. Section 2.3. "Fate and Transport of Pb." p. 2–24. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁹ EPA (2013) ISA for Lead. Section 3.1.1. "Pathways for Pb Exposure." p. 3–1. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³⁰ EPA (2013) ISA for Lead. Sections 1.3.

"Exposure to Ambient Pb." p. 1–11. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³¹ EPA (2013) ISA for Lead. Sections 3.4.1. "Pb in Blood." p. 3–85; Section 5.4. "Summary." p. 5–40. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³² EPA (2006) Air Quality Criteria for Lead. Chapter 3. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

³³ EPA (1986) Air Quality Criteria for Lead. Section 1.11.3. EPA, Washington, DC, EPA–600/8–83/028aF–dF (NTIS PB87142386), 1986.

³⁴ EPA (1977) Air Quality Criteria for Lead. Section 12.3.1.1. "Air Exposures." p. 12–10. EPA, Washington, DC, EPA–600/8–77–017 (NTIS PB280411), 1977.

Similarly, with regard to emissions from engines used in covered aircraft, there have been studies reporting positive associations of children's blood lead levels with proximity to airports and activity by covered aircraft,^{37,38,39} thus indicating potential for children's exposure to lead from covered aircraft engine emissions. A recent study evaluating cardiovascular mortality rates in adults 65 and older living within a few kilometers and downwind of runways, while not evaluating blood lead levels, found higher mortality rates in adults living near single-runway airports in years with more piston-engine air traffic, but not in adults living near multi-runway airports, suggesting the potential for adverse adult health effects near some airports.⁴⁰

1. Piston-Engine Aircraft and the Use of Leaded Aviation Gasoline

Aircraft operating in the U.S. are largely powered by either turbine engines or piston engines, although other propulsion systems are in use and in development. Turbine-engine powered aircraft and a small percentage of piston-engine aircraft (*i.e.*, those with diesel engines) operate on fuel that does not contain a lead additive. Covered aircraft, which are predominantly piston-engine powered aircraft, operate on leaded avgas. Examples of covered aircraft include smaller piston-powered aircraft such as the Cessna 172 (single-engine aircraft) and the Beechcraft Baron G58 (twin-engine aircraft), as well as the largest piston-engine aircraft such as the Curtiss C–46 and the Douglas DC–6. Additionally, some rotorcraft, such as the Robinson R44 helicopter, light-sport aircraft, and ultralight vehicles can have piston engines that operate using leaded avgas. In limited cases, some turbopropeller-powered aircraft (also

³⁵ EPA (1977) Air Quality Criteria for Lead. Section 12.3.1.2. "Air Exposures." p. 12–10. EPA, Washington, DC, EPA–600/8–77–017 (NTIS PB280411), 1977.

³⁶ EPA (1977) Air Quality Criteria for Lead. Section 12.3.1.1. "Air Exposures." p. 12–10. EPA, Washington, DC, EPA–600/8–77–017 (NTIS PB280411), 1977.

³⁷ Miranda et al., 2011. A Geospatial Analysis of the Effects of Aviation Gasoline on Childhood Blood Lead Levels. *Environmental Health Perspectives*. 119:1513–1516.

³⁸ Zahran et al., 2017. The Effect of Leaded Aviation Gasoline on Blood Lead in Children. *Journal of the Association of Environmental and Resource Economists*. 4(2):575–610.

³⁹ Zahran et al., 2022. Leaded Aviation Gasoline Exposure Risk and Child Blood Lead Levels. *Proceedings of the National Academy of Sciences Nexus*. 2:1–11.

⁴⁰ Klemick et al., 2022. Cardiovascular Mortality and Leaded Aviation Fuel: Evidence from Piston-Engine Air Traffic in North Carolina. *International Journal of Environmental Research and Public Health*. 19(10):5941.

scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air” Section 109 of the CAA directs the Administrator to propose and promulgate “primary” and “secondary” NAAQS for pollutants for which air quality criteria are issued. Under CAA section 109(d)(1), EPA must periodically complete a thorough review of the air quality criteria and the NAAQS and make such revisions as may be appropriate in accordance with sections 108 and 109(b) of the CAA. A fuller description of these legislative requirements can be found, for example, in the ISA (see 2013 Lead ISA, p. lxix).

¹⁸ Section 109(b)(1) defines a primary standard as one “the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.” A secondary standard, as defined in section 109(b)(2), must “specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.”

¹⁹ EPA (2013) ISA for Lead. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁰ The EPA released the ISA for Lead External Review Draft as part of the Agency's current review of the science regarding health and welfare effects of lead. EPA/600/R–23/061. This draft assessment is undergoing peer review by the Clean Air Scientific Advisory Committee (CASAC) and public comment, and is available at: <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=357282>.

²¹ EPA (1977) Air Quality Criteria for Lead. EPA, Washington, DC, EPA–600/8–77–017 (NTIS PB280411), 1977.

²² EPA (1986) Air Quality Criteria for Lead. EPA, Washington, DC, EPA–600/8–83/028aF–dF (NTIS PB87142386), 1986.

²³ EPA (2006) Air Quality Criteria for Lead. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

²⁴ EPA (2013) ISA for Lead. Section 3.1.1. “Pathways for Pb Exposure.” p. 3–1. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁵ EPA (2013) ISA for Lead. Section 3.7.1. “Exposure.” p. 3–144. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

referred to as turboprops), can use leaded avgas.

Lead is added to avgas in the form of tetraethyl lead. Tetraethyl lead helps boost fuel octane, prevents engine knock, and prevents valve seat recession and subsequent loss of compression for engines without hardened valves. There are three main types of leaded avgas: 100 Octane, which can contain up to 4.24 grams of lead per gallon (1.12 grams of lead per liter), 100 Octane Low Lead (100LL), which can contain up to 2.12 grams of lead per gallon (0.56 grams of lead per liter), and 100 Octane Very Low Lead (100VLL), which can contain up to 0.71 grams of lead per gallon (0.45 grams of lead per liter).⁴¹ Currently, 100LL is the most commonly available and most commonly used type of avgas.⁴² Tetraethyl lead was first used in piston-engine aircraft in 1927.⁴³ Commercial and military aircraft in the U.S. operated on 100 Octane leaded avgas into the 1950s, but in subsequent years, the commercial and military aircraft fleet largely converted to turbine-engine powered aircraft which do not use leaded avgas.^{44 45} The use of avgas containing approximately 4 grams of lead per gallon continued in piston-engine aircraft until the early 1970s when 100LL became the dominant leaded fuel in use.

There are two sources of data from the Federal Government that provide annual estimates of the volume of leaded avgas supplied and consumed in the U.S.: the Department of Energy, Energy Information Administration (DOE EIA) provides information on the volume of leaded avgas supplied in the U.S.,⁴⁶ and the FAA provides information on the volume of leaded

avgas consumed in the U.S.⁴⁷ Over the ten-year period from 2011 through 2020, DOE estimates of the annual volume of leaded avgas supplied averaged 184 million gallons, with year-on-year fluctuations in fuel supplied ranging from a 25 percent increase to a 29 percent decrease. Over the same period, from 2011 through 2020, the FAA estimates of the annual volume of leaded avgas consumed averaged 196 million gallons, with year-on-year fluctuations in fuel consumed ranging from an eight percent increase to a 14 percent decrease. The FAA forecast for consumption of leaded avgas in the U.S. ranges from 185 million gallons in 2026 to 179 million gallons in 2041, a decrease of three percent in that period.⁴⁸ As described later in this section, while the national consumption of leaded avgas is expected to decrease three percent from 2026 to 2041, the FAA projects increased activity at some airports and decreased activity at other airports out to 2045.

The FAA's National Airspace System Resource (NASR)⁴⁹ provides a complete list of operational airport facilities in the U.S. Among the approximately 19,600 airports listed in the NASR, approximately 3,300 are included in the National Plan of Integrated Airport Systems (NPIAS) and support the majority of piston-engine aircraft activity that occurs annually in the U.S.⁵⁰ While less aircraft activity occurs at the remaining 16,300 airports, that activity is conducted predominantly by piston-engine aircraft. Approximately 6,000 airports have been in operation since the early 1970s when the leaded fuel being used contained up to 4.24 grams of lead per gallon of avgas.⁵¹ The activity by piston-engine aircraft spans

a range of purposes, as described further below.

As of 2019, there were 171,934 piston-engine aircraft in the U.S.⁵² This total includes 128,926 single-engine aircraft, 12,470 twin-engine aircraft, and 3,089 rotorcraft.⁵³ The average age of single-engine aircraft in 2018 was 46.8 years, and the average age of twin-engine aircraft in 2018 was 44.7 years old.⁵⁴ In 2019, 883 new piston-engine aircraft were manufactured in the U.S., some of which are exported.⁵⁵ For the period from 2019 through 2041, the fleet of fixed-wing⁵⁶ piston-engine aircraft is projected to decrease at an annual average rate of 0.9 percent, and the hours flown by these aircraft are projected to decrease 0.9 percent per year from 2019 to 2041.⁵⁷ An annual average growth rate in the production of piston-engine powered rotorcraft of 0.9 percent is forecast, with a commensurate 1.9 percent increase in hours flown in that period by piston-engine powered rotorcraft.⁵⁸ There were approximately 664,565 pilots certified to fly general aviation aircraft in the U.S. in 2021.⁵⁹ This included 197,665

⁵² FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 1: Historical General Aviation and Air Taxi Measures. Table 1.1—General Aviation and Part 135 Number of Active Aircraft By Aircraft Type 2008–2019. Retrieved on Dec. 27, 2021 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/. Separately, FAA maintains a database of FAA registered aircraft and as of January 6, 2022 there were 222,592 piston engine aircraft registered with FAA. See: <https://registry.faa.gov/aircraftinquiry/>.

⁵³ FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 1: Historical General Aviation and Air Taxi Measures. Table 1.1—General Aviation and Part 135 Number of Active Aircraft By Aircraft Type 2008–2019. Retrieved on Dec. 27, 2021 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

⁵⁴ General Aviation Manufacturers Association (GAMA) (2019) General Aviation Statistical Databook and Industry Outlook, p. 27. Retrieved on October 7, 2021 from: https://gama.aero/wp-content/uploads/GAMA_2019Databook_Final-2020-03-20.pdf.

⁵⁵ GAMA (2019) General Aviation Statistical Databook and Industry Outlook, p. 16. Retrieved on October 7, 2021 from: https://gama.aero/wp-content/uploads/GAMA_2019Databook_Final-2020-03-20.pdf.

⁵⁶ There are both fixed-wing and rotary-wing aircraft; and airplane is an engine-driven, fixed-wing aircraft and a rotorcraft is an engine-driven rotary-wing aircraft.

⁵⁷ See FAA Aerospace Forecast Fiscal Years 2021–2041. p. 28. Available at https://www.faa.gov/sites/aa.gov/files/data_research/aviation/aerospace_forecasts/FY2021-41_FAA_Aerospace_Forecast.pdf.

⁵⁸ FAA Aerospace Forecast Fiscal Years 2021–2041. Table 28. p. 116., and Table 29. p. 117. Available at https://www.faa.gov/sites/aa.gov/files/data_research/aviation/aerospace_forecasts/FY2021-41_FAA_Aerospace_Forecast.pdf.

⁵⁹ FAA. U.S. Civil Airmen Statistics. 2021 Active Civil Airman Statistics. Retrieved from <https://>

⁴¹ ASTM International (May 1, 2021) Standard Specification for Leaded Aviation Gasolines D910–21.

⁴² National Academies of Sciences, Engineering, and Medicine (NAS). 021. Options for Reducing Lead Emissions from Piston-Engine Aircraft. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26050>.

⁴³ Ogston 1981. A Short History of Aviation Gasoline Development, 1903–1980. *Society of Automotive Engineers*. p. 810848.

⁴⁴ U.S. Department of Commerce Civil Aeronautics Administration. Statistical Handbook of Aviation (Years 1930–1959). <https://babel.hathitrust.org/cgi/pt?id=mdp.39015027813032&view=1up&seq=899>.

⁴⁵ U.S. Department of Commerce Civil Aeronautics Administration. Statistical Handbook of Aviation (Years 1960–1971). <https://babel.hathitrust.org/cgi/pt?id=mdp.3901500450279&view=1up&seq=9&skin=2021>.

⁴⁶ DOE. EIA. Petroleum and Other Liquids; Supply and Disposition. Aviation Gasoline in Annual Thousand Barrels. Fuel production volume data obtained from https://www.eia.gov/dnav/pet/pet_sum_snd_a_eppv_mbl_a_cur-1.htm and <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PETS&s=C400000001&f=A> on Dec. 30, 2021.

⁴⁷ Department of Transportation (DOT). FAA. Aviation Policy and Plans. FAA Aerospace Forecast Fiscal Years 2009–2025. p. 81. Retrieved on Mar. 22, 2022, from https://www.faa.gov/data_research/aviation/aerospace_forecasts/2009-2025/media/2009%20Forecast%20Doc.pdf. This document provides historical data for 2000–2008 as well as forecast data.

⁴⁸ DOT. FAA. Aviation Policy and Plans. Table 23. p. 111. FAA Aerospace Forecast Fiscal Years 2021–2041. Available at https://www.faa.gov/sites/aa.gov/files/data_research/aviation/aerospace_forecasts/FY2021-41_FAA_Aerospace_Forecast.pdf.

⁴⁹ See FAA. NASR. Available at https://www.faa.gov/air_traffic/flight_info/aeronav/aero_data/eNASR_Browser/.

⁵⁰ FAA (2020) National Plan of Integrated Airport Systems (NPIAS) 2021–2025 Published by the Secretary of Transportation Pursuant to Title 49 U.S. Code, section 47103. Retrieved on Nov. 3, 2021 from: https://www.faa.gov/airports/planning_capacity/npias/current/media/NPIAS-2021-2025-Narrative.pdf.

⁵¹ See FAA's NASR. Available at https://www.faa.gov/air_traffic/flight_info/aeronav/aero_data/eNASR_Browser/.

student pilots and 466,900 non-student pilots. In addition, there were more than 301,000 FAA Non-Pilot Certificated mechanics.⁶⁰

Piston-engine aircraft are used to conduct flights that are categorized as either general aviation or air taxi. General aviation flights are defined as all aviation other than military and those flights by scheduled commercial airlines. Air taxi flights are short duration flights made by small commercial aircraft on demand. The hours flown by aircraft in the general aviation fleet are comprised of personal and recreational transportation (67 percent), business (12 percent), instructional flying (8 percent), medical transportation (less than one percent), and the remainder includes hours spent in other applications such as aerial observation and aerial application.⁶¹ Aerial application for agricultural activity includes crop and timber production, which involve fertilizer and pesticide application and seeding cropland. In 2019, aerial application in agriculture represented 883,600 hours flown by general aviation aircraft, and approximately 17.5 percent of these total hours were flown by piston-engine aircraft.⁶² While the majority of leaded avgas is consumed by piston-engine aircraft, in 2019, 403,700 gallons (0.2 percent) of leaded avgas was consumed by turboprop aircraft.⁶³

Approximately 71 percent of the hours flown that are categorized as general aviation activity are conducted by piston-engine aircraft, and 17 percent of the hours flown that are categorized as air taxi are conducted by piston-engine aircraft.⁶⁴ From the period 2012

through 2019, the total hours flown by piston-engine aircraft increased nine percent from 13.2 million hours in 2012 to 14.4 million hours in 2019.^{65 66}

As noted earlier, the U.S. has a dense network of airports where piston-engine aircraft operate, and a small subset of those airports have air traffic control towers which collect daily counts of aircraft operations at the facility (one takeoff or landing event is termed an “operation”). These daily operations are provided by the FAA in the Air Traffic Activity System (ATADS).⁶⁷ The ATADS reports three categories of airport operations that can be conducted by piston-engine aircraft: Itinerant General Aviation, Local Civil, and Itinerant Air Taxi. The sum of Itinerant General Aviation and Local Civil at a facility is referred to as general aviation operations. Piston-engine aircraft operations in these categories are not reported separately from operations conducted by aircraft using other propulsion systems (e.g., turboprop). Because piston-engine aircraft activity generally comprises the majority of general aviation activity at an airport, general aviation activity is often used as a surrogate measure for understanding piston-engine activity.

In order to understand the trend in airport-specific piston-engine activity in the past ten years, we evaluated the trend in general aviation activity. We calculated the average activity at each of the airports in ATADS over three-year periods for the years 2010 through 2012 and for the years 2017 through 2019. We focused this trend analysis on the airports in ATADS because these data are collected daily at an airport-specific control tower (in contrast with annual activity estimates provided at airports without control towers). There were 513 airports in ATADS for which data were available to determine annual average activity for both the 2010–2012 period and the 2017–2019 time period. The

annual average operations by general aviation at each of these airports in the period 2010 through 2012 ranged from 31 to 346,415, with a median of 34,368; the annual average operations by general aviation in the period from 2017 through 2019 ranged from 2,370 to 396,554, with a median of 34,365. Of the 513 airports, 211 airports reported increased general aviation activity over the period evaluated.⁶⁸ The increase in the average annual number of operations by general aviation aircraft at these 211 facilities ranged from 151 to 136,872 (an increase of two percent and 52 percent, respectively).

While national consumption of leaded avgas is forecast to decrease three percent from 2026 to 2045, this change in fuel consumption is not expected to occur uniformly across airports in the U.S. The FAA produces the Terminal Area Forecast (TAF), which is the official forecast of aviation activity for the 3,300 U.S. airports that are in the NPIAS.⁶⁹ For the 3,306 airports in the TAF, we compared the average activity by general aviation at each airport from 2017–2019 with the FAA forecast for general aviation activity at those airports in 2045. The FAA forecasts that activity by general aviation will decrease at 234 of the airports in the TAF, remain the same at 1,960 airports, and increase at 1,112 of the airports. To evaluate the magnitude of potential increases in activity for the same 513 airports for which we evaluated activity trends in the past ten years, we compared the 2017–2019 average general aviation activity at each of these airports with the forecasted activity for 2045 in the TAF.⁷⁰ The annual operations estimated for the 513 airports in 2045 ranges from 2,914 to 427,821 with a median of 36,883. The TAF forecasts an increase in activity at 442 of the 513 airports out to 2045, with the increase in operations at those facilities ranging from 18 to 83,704 operations annually (an increase of 0.2 percent and 24 percent, respectively).

www.faa.gov/data_research/aviation_data_statistics/civil_airmen_statistics on May 20, 2022.

⁶⁰ FAA. U.S. Civil Airmen Statistics. 2021 Active Civil Airmen Statistics. Retrieved from https://www.faa.gov/data_research/aviation_data_statistics/civil_airmen_statistics on May 20, 2022.

⁶¹ FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 1: Historical General Aviation and Air Taxi Measures. Table 1.4—General Aviation and Part 135 Total Hours Flown By Actual Use 2008–2019 (Hours in Thousands). Retrieved on Dec. 27, 2021 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

⁶² FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 3: Primary and Actual Use. Table 3.2—General Aviation and Part 135 Total Hours Flown by Actual Use 2008–2019 (Hours in Thousands). Retrieved on Mar., 22, 2022 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

⁶³ FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 3: Primary and Actual Use. Table 5.1—General Aviation and Part 135 Total Fuel Consumed and Average Fuel Consumption Rate by Aircraft Type. Retrieved on Feb. 16, 2023 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

⁶⁴ FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 3: Primary and Actual

Use. Table 3.2—General Aviation and Part 135 Total Hours Flown by Actual Use 2008–2019 (Hours in Thousands). Retrieved on Mar. 22, 2022 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

⁶⁵ FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 3: Primary and Actual Use. Table 1.3—General Aviation and Part 135 Total Hours Flown by Aircraft Type 2008–2019 (Hours in Thousands). Retrieved on Dec. 27, 2021 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

⁶⁶ In 2012, the FAA Aerospace Forecast projected a 0.03 percent increase in hours flown by the piston-engine aircraft fleet for the period 2012 through 2032. FAA Aerospace Forecast Fiscal Years 2012–2032. p. 53. Retrieved on Mar. 22, 2022 from https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/2012%20FAA%20Aerospace%20Forecast.pdf.

⁶⁷ See FAA’s Air Traffic Activity Data. Available at <https://aspm.faa.gov/opsnet/sys/airport.asp>.

⁶⁸ Geidosch. Memorandum to Docket EPA–HQ–OAR–2022–0389. Past Trends and Future Projections in General Aviation Activity and Emissions. June 1, 2022. Docket ID EPA–HQ–2022–0389.

⁶⁹ FAA’s TAF Fiscal Years 2020–2045 describes the forecast method, data sources, and review process for the TAF estimates. The documentation for the TAF is available at <https://taf.faa.gov/Downloads/TAFSummaryFY2020-2045.pdf>.

⁷⁰ The TAF is prepared to assist the FAA in meeting its planning, budgeting, and staffing requirements. In addition, state aviation authorities and other aviation planners use the TAF as a basis for planning airport improvements. The TAF is available on the internet. The TAF database can be accessed at: <https://taf.faa.gov>.

2. Emissions of Lead From Piston-Engine Aircraft

This section describes the physical and chemical characteristics of lead emitted by covered aircraft and the national, state, county and airport-specific annual inventories of these engine emissions of lead. Information regarding lead emissions from motor vehicle engines operating on leaded fuel is summarized in prior AQCDs for Lead, and the 2013 Lead ISA also includes information on lead emissions from piston-engine aircraft.^{71 72 73} Lead is added to avgas in the form of tetraethyl lead along with ethylene dibromide, both of which were used in leaded gasoline for motor vehicles in the past. The piston engines in which leaded fuel was used in motor vehicles in the past have similarities to piston engines used in aircraft including the same combustion cycle and the absence of aftertreatment devices to limit pollutant emissions. Because the same chemical form of lead was used in these fuels and because of the similarity in the engines combusting these leaded fuels, the summary of the science regarding emissions of lead from motor vehicles presented in the 1997 and 1986 AQCDs for Lead is relevant to understanding some of the properties of lead emitted from piston-engine aircraft and the atmospheric chemistry these emissions are expected to undergo. Recent studies relevant to understanding lead emissions from piston-engine aircraft have also been published and are discussed here.

a. Physical and Chemical Characteristics of Lead Emitted by Piston-Engine Aircraft

As with motor vehicle engines, when leaded avgas is combusted in aircraft engines, the lead is oxidized to form lead oxide. In the absence of the ethylene dibromide lead scavenger in the fuel, lead oxide can collect on the valves and spark plugs, and if the deposits become thick enough, the engine can be damaged. Ethylene dibromide reacts with the lead oxide, converting it to brominated lead and lead oxybromides. These brominated forms of lead remain volatile at high combustion temperatures and are

emitted from the engine along with the other combustion by-products.⁷⁴ Upon cooling to ambient temperatures these brominated lead compounds are converted to particulate matter. The presence of lead dibromide particles in the exhaust from a piston-engine aircraft has been confirmed by Griffith (2020) and is the primary form of lead emitted by engines operating on leaded fuel.⁷⁵ In addition to lead bromides, ammonium salts of other lead halides were also emitted by motor vehicles, and therefore, ammonium salts of lead bromide compounds would be expected in the exhaust of piston-engine aircraft.⁷⁶

Uncombusted alkyl lead was also measured in the exhaust of motor vehicles operating on leaded gasoline and is therefore likely to be present in the exhaust from piston-engine aircraft.⁷⁷ Alkyl lead is the general term used for organic lead compounds and includes the lead additive tetraethyl lead. Summarizing the available data regarding emissions of alkyl lead from piston-engine aircraft, the 2013 Lead ISA notes that lead in the exhaust that might be in organic form may potentially be 20 percent (as an upper bound estimate).^{78 79} In addition, tetraethyl lead is a highly volatile compound, and therefore, a portion of tetraethyl lead in fuel exposed to air will partition into the vapor phase.⁸⁰

Particles emitted by piston-engine aircraft are in the submicron size range (less than one micron in diameter). The Swiss Federal Office of Civil Aviation (FOCA) published a study of piston-engine aircraft emissions including

measurements of lead.⁸¹ The Swiss FOCA reported the mean particle diameter of particulate matter emitted by one single-engine piston-powered aircraft operating on leaded fuel that ranged from 0.049 to 0.108 microns under different power conditions (lead particles would be expected to be present, but these particles were not separately identified in this study). The particle number concentration ranged from 5.7×10^6 to 8.6×10^6 particles per cm^3 . The authors noted that these particle emission rates are comparable to those from a typical diesel passenger car engine without a particle filter.⁸² Griffith (2020) collected exhaust particles from a piston-engine aircraft operating on leaded avgas and examined the particles using electron microscopy. Griffith reported that the mean diameter of particles collected in exhaust was 13 nanometers (0.013 microns) consisting of a 4 nanometer (0.004 micron) lead dibromide particle surrounded by hydrocarbons.

b. Inventory of Lead Emitted by Piston-Engine Aircraft

Lead emissions from covered aircraft are the largest single source of lead to air in the U.S., contributing over 50 percent of lead emissions to air starting in 2008 (Table 1).⁸³ In 2017, approximately 470 tons of lead were emitted by engines in piston-powered aircraft, which constituted 70 percent of the annual emissions of lead to air in that year.⁸⁴ Lead is emitted at and near thousands of airports in the U.S. as described in section II.A.1. of this document. The EPA's method for developing airport-specific lead estimates is described in the EPA's Advance Notice of Proposed Rulemaking on Lead Emissions from Piston-Engine Aircraft Using Leaded

⁷⁴ EPA (1986) Air Quality Criteria for Lead. EPA, Washington, DC, EPA-600/8-83/028aF-dF (NTIS PB87142386), 1986.

⁷⁵ Griffith 2020. Electron microscopic characterization of exhaust particles containing lead dibromide beads expelled from aircraft burning leaded gasoline. *Atmospheric Pollution Research* 11:1481-1486.

⁷⁶ EPA (1986) Air Quality Criteria for Lead. Volume 2: Chapters 5 & 6. EPA, Washington, DC, EPA-600/8-83/028aF-dF (NTIS PB87142386), 1986.

⁷⁷ EPA (2013) ISA for Lead. Table 2-1. "Pb Compounds Observed in the Environment." p. 2-8. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

⁷⁸ EPA (2013) ISA for Lead. Section 2.2.2.1 "Pb Emissions from Piston-engine Aircraft Operating on Leaded-Aviation Gasoline and Other Non-road Sources." p. 2-10. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

⁷⁹ One commenter asserts that the information summarized in the 2013 Lead ISA regarding emission of alkyl lead from piston-engine aircraft is a supposition and should not inform this action. We respond to this comment in the Response to Comments document for this action.

⁸⁰ Memorandum to Docket EPA-HQ-OAR-2022-0389. Potential Exposure to Non-exhaust Lead and Ethylene Dibromide. June 15, 2022. Docket ID EPA-HQ-2022-0389.

⁸¹ Swiss FOCA (2007) Aircraft Piston Engine Emissions Summary Report. 33-05-003 Piston Engine Emissions. Swiss FOCA Summary. Report_070612 rit. Available at <https://www.bazl.admin.ch/bazl/en/home/specialists/regulations-and-guidelines/environment/pollutant-emissions/aircraft-engine-emissions/report-appendices-database-and-data-sheets.html>. Retrieved on June 15, 2022.

⁸² Swiss FOCA (2007) Aircraft Piston Engine Emissions Summary Report. 33-05-003 Piston Engine Emissions. Swiss FOCA Summary. Report_070612 rit. Section 2.2.3.a. Available at <https://www.bazl.admin.ch/bazl/en/home/specialists/regulations-and-guidelines/environment/pollutant-emissions/aircraft-engine-emissions/report-appendices-database-and-data-sheets.html>. Retrieved on June 15, 2022.

⁸³ The lead inventories for 2008, 2011 and 2014 are provided in the U.S. EPA (2018b) Report on the Environment Exhibit 2. Anthropogenic lead emissions in the U.S. Available at <https://cfpub.epa.gov/roe/indicator.cfm?i=13#2>.

⁸⁴ EPA 2017 NEI. Available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>.

⁷¹ EPA (1977) Air Quality Criteria for Lead. EPA, Washington, DC, EPA-600/8-77-017 (NTIS PB280411), 1977.

⁷² EPA (1986) Air Quality Criteria for Lead. EPA, Washington, DC, EPA-600/8-83/028aF-dF (NTIS PB87142386), 1986.

⁷³ EPA (2013) ISA for Lead. Section 2.2.2.1 "Pb Emissions from Piston-engine Aircraft Operating on Leaded Aviation Gasoline and Other Non-road Sources." pp. 2-7 through 2-10. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

Aviation Gasoline⁸⁵ and in the document titled “Calculating Piston-Engine Aircraft Airport Inventories for Lead for the 2008 National Emissions Inventory.”⁸⁶ The EPA’s National

Emissions Inventory (NEI) reports airport estimates of lead emissions as well as estimates of lead emitted in-flight, which are allocated to states based on the fraction of piston-engine

aircraft activity estimated for each state. These inventory data are briefly summarized here at the state, county, and airport level.⁸⁷

TABLE 1—PISTON-ENGINE EMISSIONS OF LEAD TO AIR

	2008	2011	2014	2017	2020 ^a
Piston-engine emissions of lead to air, tons	560	490	460	470	427
Total U.S. lead emissions, tons	950	810	720	670	621
Piston-engine emissions as a percent of the total U.S. lead inventory ..	59%	60%	64%	70%	69%

^a Due to the Covid-19 Pandemic, a substantial decrease in activity by aircraft occurred in 2020, impacting the total lead emissions for this year. The 2020 NEI is available at: <https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-data>.

At the state level, the EPA estimates of lead emissions from piston-engine aircraft range from 0.3 tons (Rhode Island) to 50.5 tons (California), 47 percent of which is emitted in the landing and takeoff cycle and 53 percent of which the EPA estimates is emitted in-flight, outside the landing and takeoff cycle.⁸⁸ Among the counties in the U.S. where the EPA estimates engine emissions of lead from covered aircraft, these lead inventories range from 0.00005 tons per year to 4.3 tons per year and constitute the only source of air-related lead in 1,140 counties (the county estimates of lead emissions include the lead emitted during the landing and takeoff cycle and not lead emitted in-flight).⁸⁹ In the counties where engine emissions of lead from aircraft are the sole source of lead to these estimates, annual lead emissions

from the landing and takeoff cycle ranged from 0.00015 to 0.74 tons. Among the 1,872 counties in the U.S. with multiple sources of lead, including engine emissions from covered aircraft, the contribution of aircraft engine emissions ranges from 0.00005 to 4.3 tons, comprising 0.15 to 98 percent of the county total, respectively.

The EPA estimates that among the approximately 20,000 airports in the U.S., airport lead inventories range from 0.00005 tons per year to 0.9 tons per year.⁹⁰ In 2017, the EPA’s NEI includes 638 airports where the EPA estimates engine emissions of lead from covered aircraft were 0.1 ton or more of lead annually. Using the FAA’s forecasted activity in 2045 for the approximately 3,300 airports in the NPIAS (as described in section II.A.1. of this document), the EPA estimates airport-

specific inventories may range from 0.00003 tons to 1.28 tons of lead (median of 0.03 tons), with 656 airports estimated to have inventories above 0.1 tons in 2045.⁹¹

We estimate that piston-engine aircraft have consumed approximately 38.6 billion gallons of leaded avgas in the U.S. since 1930, excluding military aircraft use of this fuel, emitting approximately 113,000 tons of lead to the air.⁹²

3. Concentrations of Lead in Air Attributable to Emissions From Piston-Engine Aircraft

In this section, we describe the concentrations of lead in air resulting from emissions of lead from covered aircraft. Air quality monitoring and modeling studies for lead at and near airports have identified elevated

⁸⁵ Advance Notice of Proposed Rulemaking on Lead Emissions from Piston-Engine Aircraft Using Leaded Aviation Gasoline. 75 FR 2440 (April 28, 2010).

⁸⁶ Airport lead annual emissions data used were reported in the 2017 NEI. Available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>. The methods used to develop these inventories are described in EPA (2010) Calculating Piston-Engine Aircraft Airport Inventories for Lead for the 2008 NEI. EPA, Washington, DC, EPA-420-B-10-044, 2010. (Also available in the docket for this action, EPA-HQ-OAR-2022-0389).

⁸⁷ The 2017 NEI utilized 2014 aircraft activity data to develop airport-specific lead inventories. Details can be found on page 3–17 of the document located here: https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf#page=70&zoom=100,68,633. Because the 2020 inventory was impacted by the Covid-19 pandemic-related decrease in activity by aircraft in

2020, the EPA is focusing on the 2017 inventory in this final action.

⁸⁸ Lead emitted in-flight is assigned to states based on their overall fraction of total piston-engine aircraft operations. The state-level estimates of engine emissions of lead include both lead emitted in the landing and takeoff cycle as well as lead emitted in-flight. The method used to develop these estimates is described in EPA (2010) Calculating Piston-Engine Aircraft Airport Inventories for Lead for the 2008 NEI, available here: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1009I13.PDF?Dockey=P1009I13.PDF>.

⁸⁹ Airport lead annual emissions data cited were reported in the 2017 NEI. Available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>. In addition to the triennial NEI, the EPA collects from state, local, and Tribal air agencies point source data for larger sources every year (see <https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr> for specific emissions thresholds). While these data are not typically

published as a new NEI, they are available publicly upon request and are also included in <https://www.epa.gov/air-emissions-modeling/emissions-modeling-platforms> that are created for years other than the triennial NEI years. County estimates of lead emissions from non-aircraft sources used in this action are from the 2019 inventory. There are 3,012 counties and statistical equivalent areas where EPA estimates engine emissions of lead occur.

⁹⁰ See EPA lead inventory data available at <https://www.epa.gov/air-emissions-modeling/emissions-modeling-platforms>.

⁹¹ EPA used the method described in EPA (2010) Calculating Piston-Engine Aircraft Airport Inventories for Lead for the 2008 NEI to estimate airport lead inventories in 2045. This document is available here: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1009I13.PDF?Dockey=P1009I13.PDF>.

⁹² Geidosch. Memorandum to Docket EPA-HQ-OAR-2022-0389. Lead Emissions from the use of Leaded Aviation Gasoline from 1930 through 2020. June 1, 2022. Docket ID EPA-HQ-2022-0389.

concentrations of lead in air from piston-engine aircraft exhaust at, and downwind of, airports where these aircraft are active.^{93 94 95 96 97 98 99} This section provides a summary of the literature regarding the local-scale impact of aircraft emissions of lead on concentrations of lead at and near airports, with specific focus on the results of air monitoring for lead that the EPA required at a subset of airports and an analysis conducted by the EPA to estimate concentrations of lead at 13,000 airports in the U.S., titled “Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports.”^{100 101}

⁹³ Carr et al., 2011. Development and evaluation of an air quality modeling approach to assess near-field impacts of lead emissions from piston-engine aircraft operating on leaded aviation gasoline. *Atmospheric Environment*, 45 (32), 5795–5804. DOI: <https://dx.doi.org/10.1016/j.atmosenv.2011.07.017>.

⁹⁴ Feinberg et al., 2016. Modeling of Lead Concentrations and Hot Spots at General Aviation Airports. *Journal of the Transportation Research Board*, No. 2569, Transportation Research Board, Washington, DC, pp. 80–87. DOI: 10.3141/2569-09.

⁹⁵ Municipality of Anchorage (2012). *Merrill Field Lead Monitoring Report*. Municipality of Anchorage Department of Health and Human Services. Anchorage, Alaska. Available at <https://www.muni.org/Departments/health/Admin/environment/AirQ/Documents/Merrill%20Field%20Lead%20Monitoring%20Study%202012/Merrill%20Field%20Lead%20Study%20Report%20-%20final.pdf>.

⁹⁶ Environment Canada (2000) Airborne Particulate Matter, Lead and Manganese at Buttonville Airport. Toronto, Ontario, Canada: Conor Pacific Environmental Technologies for Environmental Protection Service, Ontario Region.

⁹⁷ Fine et al., 2010. *General Aviation Airport Air Monitoring Study*. South Coast Air Quality Management District. Available at <https://www.aqmd.gov/docs/default-source/air-quality/air-quality-monitoring-studies/general-aviation-study/study-of-air-toxins-near-van-nuys-and-santa-monica-airport.pdf>.

⁹⁸ Lead emitted from piston-engine aircraft in the particulate phase would also be measured in samples collected to evaluate total ambient PM_{2.5} concentrations.

⁹⁹ One commenter provided results from a monitoring and modeling study at a general aviation airport in Wisconsin that reports increased lead concentrations with increasing proximity to the airport. See attachments provided to the comments from the Town of Middleton (EPA–HQ–OAR–2022–0389–0178 attachment 2.pdf and EPA–HQ–OAR–2022–0389–0178 attachment 3.pdf) available in the docket for this action EPA–HQ–OAR–2022–0389.

¹⁰⁰ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. EPA, Washington, DC, EPA–420–R–20–003, 2020. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>. EPA responses to peer review comments on the report are available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YIWD.pdf>. These documents are also available in the docket for this action (Docket EPA–HQ–OAR–2022–0389).

¹⁰¹ EPA (2022) Technical Support Document (TSD) for the EPA’s Proposed Finding that Lead Emissions from Aircraft Engines that Operate on Leaded Fuel Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger

Gradient studies evaluate how lead concentrations change with distance from an airport where piston-engine aircraft operate. These studies indicate that concentrations of lead in air, averaged over periods of 18 hours to three months, are estimated to be one to two orders of magnitude higher at locations proximate to aircraft emissions, compared to nearby locations not impacted by a source of lead air emissions.^{102 103 104 105 106} The magnitude of lead concentrations at and near airports is highly influenced by the amount of aircraft activity (*i.e.*, the number of take-off and landing operations, particularly if concentrated at one runway) and the time spent by aircraft in specific modes of operation. The most significant emissions in terms of ground-based activity, and therefore ground-level concentrations of lead in air, occur near the areas with greatest fuel consumption where the aircraft are stationary and running.^{107 108 109} For piston-engine aircraft these areas are most commonly locations in which pilots conduct engine tests during run-up operations prior to take-off (*e.g.*, magneto checks during the run-up operation mode). Run-up operations are conducted while the brakes are engaged

Public Health and Welfare. EPA, Washington, DC, EPA–420–R–22–025, 2022. Available in the docket for this action.

¹⁰² Carr et al., 2011. Development and evaluation of an air quality modeling approach to assess near-field impacts of lead emissions from piston-engine aircraft operating on leaded aviation gasoline. *Atmospheric Environment*, 45 (32), 5795–5804. DOI: <https://dx.doi.org/10.1016/j.atmosenv.2011.07.017>.

¹⁰³ Heiken et al., 2014. Quantifying Aircraft Lead Emissions at Airports. ACRP Report 133. Available at <https://www.nap.edu/catalog/22142/quantifying-aircraft-lead-emissions-at-airports>.

¹⁰⁴ Hudda et al., 2022. Substantial Near-Field Air Quality Improvements at a General Aviation Airport Following a Runway Shortening. *Environmental Science & Technology*. DOI: 10.1021/acs.est.1c06765.

¹⁰⁵ Fine et al., 2010. *General Aviation Airport Air Monitoring Study*. South Coast Air Quality Management District. Available at <https://www.aqmd.gov/docs/default-source/air-quality/air-quality-monitoring-studies/general-aviation-study/study-of-air-toxins-near-van-nuys-and-santa-monica-airport.pdf>.

¹⁰⁶ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. EPA, Washington, DC, EPA–420–R–20–003, 2020.

¹⁰⁷ EPA (2010) Development and Evaluation of an Air Quality Modeling Approach for Lead Emissions from Piston-Engine Aircraft Operating on Leaded Aviation Gasoline. EPA, Washington, DC, EPA–420–R–10–007, 2010. <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1007H4Q.PDF?Dockey=P1007H4Q.PDF>.

¹⁰⁸ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. EPA, Washington, DC, EPA–420–R–20–003, 2020.

¹⁰⁹ Feinberg et al., 2016. Modeling of Lead Concentrations and Hot Spots at General Aviation Airports. *Journal of the Transportation Research Board*, No. 2569, Transportation Research Board, Washington, DC, pp. 80–87. DOI: 10.3141/2569-09.

so the aircraft is stationary and are often conducted adjacent to the runway end from which the aircraft will take off. Additional modes of operation by piston-engine aircraft, such as taxiing or idling near the runway, may result in additional hotspots of elevated lead concentration (*e.g.*, start-up and idle, maintenance run-up).¹¹⁰

The lead NAAQS was revised in 2008.¹¹¹ The 2008 decision revised the level, averaging time and form of the standards to establish the current primary and secondary standards, which are both 0.15 micrograms per cubic meter of air, in terms of the average of three consecutive monthly averages of lead in total suspended particles within a three-year period.¹¹² In conjunction with strengthening the lead NAAQS in 2008, the EPA enhanced the existing lead monitoring network by requiring monitors to be placed in areas with sources such as industrial facilities and airports with estimated lead emissions of 1.0 ton or more per year. Lead monitoring was conducted at two airports following from these requirements (Deer Valley Airport, AZ, and the Van Nuys Airport, CA). In 2010, the EPA made further revisions to the monitoring requirements such that state and local air quality agencies are required to monitor near industrial facilities with estimated lead emissions of 0.50 tons or more per year and at airports with estimated emissions of 1.0 ton or more per year.¹¹³ As part of this 2010 requirement to expand lead monitoring, the EPA also required a one-year monitoring study of 15 additional airports with estimated lead emissions between 0.50 and 1.0 ton per year in an effort to better understand how these emissions affect concentrations of lead in the air at and near airports. Further, to help evaluate airport characteristics that could lead to ambient lead concentrations that approach or exceed the lead NAAQS, airports for this one-year monitoring study were selected based on factors such as the level of piston-engine aircraft activity and the predominant use of one runway due to wind patterns.

As a result of these requirements, state and local air authorities collected and certified lead concentration data for at least one year at 17 airports with most monitors starting in 2012 and generally continuing through 2013. The data

¹¹⁰ Feinberg et al., 2016. Modeling of Lead Concentrations and Hot Spots at General Aviation Airports. *Journal of the Transportation Research Board*, No. 2569, Transportation Research Board, Washington, DC, pp. 80–87. DOI: 10.3141/2569-09.

¹¹¹ 73 FR 66965 (Nov. 12, 2008).

¹¹² 40 CFR 50.16 (Nov. 12, 2008).

¹¹³ 75 FR 81126 (Dec. 27, 2010).

presented in Table 2 are based on the certified data for these sites and represent the maximum concentration

monitored in a rolling three-month average for each location.^{114 115}

TABLE 2—LEAD CONCENTRATIONS MONITORED AT 17 AIRPORTS IN THE U.S.

Airport, State	Lead design value, ¹¹⁶ µg/m ³
Auburn Municipal Airport, WA	0.06
Brookhaven Airport, NY	0.03
Centennial Airport, CO	0.02
Deer Valley Airport, AZ	0.04
Gillespie Field, CA	0.07
Harvey Field, WA	0.02
McClellan-Palomar Airport, CA	0.17
Merrill Field, AK	0.07
Nantucket Memorial Airport, MA	0.01
Oakland County International Airport, MI	0.02
Palo Alto Airport, CA	0.12
Pryor Field Regional Airport, AL	0.01
Reid-Hillview Airport, CA	0.10
Republic Airport, NY	0.01
San Carlos Airport, CA	0.33
Stinson Municipal, TX	0.03
Van Nuys Airport, CA	0.06

Monitored lead concentrations violated the lead NAAQS at two airports in 2012: the McClellan-Palomar Airport and the San Carlos Airport. At both of these airports, monitors were located in close proximity to the area at the end of the runway most frequently used for pre-flight safety checks (*i.e.*, run-up). Alkyl lead emitted by piston-engine aircraft would be expected to partition into the vapor phase and would not be collected by the monitoring conducted in this study, which is designed to quantitatively collect particulate forms of lead.¹¹⁷

Airport lead monitoring and modeling studies have identified the sharp decrease in lead concentrations with distance from the run-up area and therefore the importance of considering monitor placement relative to the run-up area when evaluating the maximum impact location attributable to lead

emissions from piston-engine aircraft. The monitoring data in Table 2 reflect differences in monitor placement relative to the run-up area as well as other factors; this study also provided evidence that air lead concentrations at and downwind from airports could be influenced by factors such as the use of more than one run-up area, wind speed, and the number of operations conducted by single- versus twin-engine aircraft.¹¹⁸

The EPA recognized that the airport lead monitoring study provided a small sample of the potential locations where emissions of lead from piston-engine aircraft could potentially cause concentrations of lead in ambient air to exceed the lead NAAQS. Because we considered that additional airports and conditions could lead to exceedances of the lead NAAQS at and near airports where piston-engine aircraft operate, and in order to understand the range of

lead concentrations at airports nationwide, we developed an analysis of 13,000 airports in the peer-reviewed report titled, “Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports.”^{119 120} This report provides estimated ranges of lead concentrations that may occur at and near airports where leaded avgas is used. The study extrapolated modeling results from one airport to estimate air lead concentrations at the maximum impact area near the run-up location for over 13,000 U.S. airports.¹²¹ The model-extrapolated lead estimates in this study indicate that some additional U.S. airports may have air lead concentrations above the NAAQS at this area of maximum impact. The report also indicates that, at the levels of activity analyzed at the 13,000 airports, estimated lead concentrations decrease to below the standard within 50 meters

¹¹⁴ EPA (2015) Program Overview: Airport Lead Monitoring. EPA, Washington, DC, EPA-420-F-15-003, 2015. Available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100LJDW.PDF?Dockey=P100LJDW.PDF>.

¹¹⁵ EPA (2022) Technical Support Document (TSD) for the EPA’s Proposed Finding that Lead Emissions from Aircraft Engines that Operate on Leaded Fuel Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare. EPA, Washington, DC, EPA-420-R-22-025, 2022. Available in the docket for this action.

¹¹⁶ A design value is a statistic that summarizes the air quality data for a given area in terms of the indicator, averaging time, and form of the standard. Design values can be compared to the level of the standard and are typically used to designate areas as meeting or not meeting the standard and assess progress towards meeting the NAAQS.

¹¹⁷ As noted earlier, when summarizing the available data regarding emissions of alkyl lead from piston-engine aircraft, the 2013 Lead ISA notes

that an upper bound estimate of lead in the exhaust that might be in organic form may potentially be 20 percent (2013 Lead ISA, p. 2–10). Organic lead in engine exhaust would be expected to influence receptors within short distances of the point of emission from piston-engine aircraft. Airports with large flight schools and/or facilities with substantial delays for aircraft queued for takeoff could experience higher concentrations of alkyl lead in the vicinity of the aircraft exhaust.

¹¹⁸ The data in Table 2 represent concentrations measured at one location at each airport and monitors were not consistently placed in close proximity to the run-up areas. As described in section II.A.3., monitored concentrations of lead in air near airports are highly influenced by proximity of the monitor to the run-up area. In addition to monitor placement, there are individual airport factors that can influence lead concentrations (*e.g.*, the use of multiple run-up areas at an airport, fleet composition, and wind speed). The monitoring data reported in Table 2 reflect a range of lead

concentrations indicative of the location at which measurements were made and the specific operations at an airport.

¹¹⁹ EPA (2020) Model-Extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹²⁰ EPA (2022) Technical Support Document (TSD) for the EPA’s Proposed Finding that Lead Emissions from Aircraft Engines that Operate on Leaded Fuel Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare. EPA, Washington, DC, EPA-420-R-22-025, 2022. Available in the docket for this action.

¹²¹ In this study, the EPA defined the maximum impact site as 15 meters downwind of the tailpipe of an aircraft conducting run-up operations in the area designated for these operations at a runway end. The maximum impact area was defined as approximately 50 meters surrounding the maximum impact site.

from the location of highest concentration.

To estimate the potential ranges of lead concentrations at and downwind of the anticipated area of highest concentration at airports in the U.S., the relationship between piston-engine aircraft activity and lead concentration at and downwind of the maximum impact site at one airport was applied to piston-engine aircraft activity estimates for each U.S. airport.¹²² This approach for conducting a nationwide analysis of airports was selected due to the impact of piston-engine aircraft run-up operations on ground-level lead concentrations, which creates a maximum impact area that is expected to be generally consistent across airports. Specifically, these aircraft consistently take off into the wind and typically conduct run-up operations immediately adjacent to the take-off runway end, and thus, modeling lead concentrations from this source is constrained by variation in a few key parameters. These parameters include (1) total amount of piston-engine aircraft activity, (2) the proportion of activity conducted at one runway end, (3) the proportion of activity conducted by multi-piston-engine aircraft, (4) the duration of run-up operations, (5) the concentration of lead in avgas, (6) wind speed at the model airport relative to the extrapolated airport, and (7) additional meteorological, dispersion model, or operational parameters. These parameters were evaluated through sensitivity analyses as well as quantitative or qualitative uncertainty analyses. To generate robust concentration estimates, the EPA evaluated these parameters, conducted wind-speed correction of extrapolated estimates, and used airport-specific information regarding airport layout and prevailing wind directions for the 13,000 airports.¹²³

Results of this national analysis show that model-extrapolated three-month average lead concentrations in the maximum impact area may potentially

exceed the lead NAAQS at some airports with activity ranging from 3,616–26,816 Landing and Take-Off events (LTOs) in a three-month period.¹²⁴ The lead concentration estimates from this model-extrapolation approach account for lead engine emissions from aircraft only, and do not include other sources of air-related lead. The broad range in LTOs that may lead to concentrations of lead exceeding the lead NAAQS is due to the piston-engine aircraft fleet mix at individual airports such that airports where the fleet is dominated by twin-engine aircraft would potentially reach concentrations of lead exceeding the lead NAAQS with fewer LTOs compared with airports where single-engine aircraft dominate the piston-engine fleet.¹²⁵ Model-extrapolated three-month average lead concentrations from aircraft engine emissions were estimated to be above background for a distance of at least 500 meters from the maximum impact area at airports with activity ranging from 1,275–4,302 LTOs in that three-month period.¹²⁶ In a separate modeling analysis at an airport at which hundreds of take-off and landing events by piston-engine aircraft occur per day, the EPA found that modeled 24-hour concentrations of lead from aircraft engine emissions were estimated to be above background for almost 1,000 meters downwind from the runway.¹²⁷

Model-extrapolated estimates of lead concentrations in the EPA report “Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports” were compared with monitored values reported in Table 2 and show general agreement, suggesting that the extrapolation method presented in this report provides reasonable estimates of the range in concentrations of lead in air attributable to three-month activity periods of piston-engine aircraft at airports. The assessment included detailed evaluation of the potential impact of run-up duration, the concentration of lead in avgas, and the impact of meteorological parameters on model-extrapolated estimates of lead

concentrations attributable to engine emissions of lead from piston-powered aircraft. Additionally, this study included a range of sensitivity analyses as well as quantitative and qualitative uncertainty analyses.

The EPA’s model-extrapolation analysis of lead concentrations from engine emissions resulting from covered aircraft found that annual airport emissions of lead estimated to result in air lead concentrations potentially exceeding the NAAQS ranged from 0.1 to 0.6 tons per year. There are key pieces of airport-specific data that are needed to fully evaluate the potential for piston-engine aircraft operating at an airport to cause concentrations of lead in the air to exceed the lead NAAQS, and the EPA’s report “Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports” provides quantitative and qualitative analyses of these factors.¹²⁸ The EPA’s estimate for airports that have annual lead inventories of 0.1 ton or more are illustrative of and provide one approach for an initial screening evaluation of locations where engine emissions of lead from aircraft may increase localized lead concentrations in air. Airport-specific assessments would be needed to determine the magnitude of the potential range in lead concentrations at and downwind of each facility.

As described in Section II.A.1 of this document, the FAA forecasts 0.9 percent decreases in piston-engine aircraft activity out to 2041; however, these decreases are not projected to occur uniformly across airports. Among the more than 3,300 airports in the FAA TAF, the FAA forecasts both decreases and increases in general aviation, which is largely comprised of piston-engine aircraft. If the current conditions on which the forecast is based persist, then lead concentrations in the air may increase at the airports where general aviation activity is forecast to increase.

In addition to airport-specific modeled estimates of lead concentrations, the EPA also provides annual estimates of lead concentrations for each census tract in the U.S. as part of the Air Toxics Screening Assessment (AirToxScreen).¹²⁹ The census tract concentrations are averages of the area-weighted census block concentrations within the tract. Lead concentrations reported in the AirToxScreen are based on emissions estimates from

¹²² Prior to this model extrapolation study, the EPA developed and evaluated an air quality modeling approach (this study is available here: <https://nepis.epa.gov/Exe/ZyPDF.cgi?P1007H4Q.PDF?Dockey=P1007H4Q.PDF>), and subsequently applied the approach to a second airport and again performed an evaluation of the model output using air monitoring data (this second study is available here: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>).

¹²³ EPA (2022) Technical Support Document (TSD) for the EPA’s Proposed Finding that Lead Emissions from Aircraft Engines that Operate on Leaded Fuel Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare. EPA, Washington, DC, EPA-420-R-22-025, 2022. Available in the docket for this action.

¹²⁴ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. Table 6. p. 53. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹²⁵ See methods used in EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. Table 2. p. 23. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹²⁶ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. Table 6. p. 53. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹²⁷ Carr et al., 2011. Development and evaluation of an air quality modeling approach to assess near-field impacts of lead emissions from piston-engine aircraft operating on leaded aviation gasoline. *Atmospheric Environment* 45: 5795–5804.

¹²⁸ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. Table 6. p. 53. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹²⁹ See EPA’s 2019 AirToxScreen. Available at <https://www.epa.gov/AirToxScreen/2019-airtoxscreen>.

anthropogenic and natural sources of lead, including aircraft engine emissions.¹³⁰ The 2019 AirToxScreen provides lead concentration estimates in air for 73,449 census tracts in the U.S.¹³¹ Lead concentrations associated with emissions from piston-engine aircraft comprised more than 50 percent of these census block area-weighted lead concentration estimates in over half of the census tracts, which included tracts in all 50 states, as well as Puerto Rico and the Virgin Islands.

4. Fate and Transport of Emissions of Lead From Piston-Engine Aircraft

This section summarizes the chemical transformation that piston-engine aircraft lead emissions are anticipated to undergo in the atmosphere and describes what is known about the deposition of piston-engine aircraft lead and its potential impacts on soil, food, and aquatic environments.

a. Atmospheric Chemistry and Transport of Emissions of Lead From Piston-Engine Aircraft

Lead emitted by piston-engine aircraft can have impacts in the local environment, and, due to their small size (*i.e.*, typically less than one micron in diameter),¹³² lead-bearing particles emitted by piston engines may disperse widely in the environment. However, lead emitted during the landing and takeoff cycle, particularly during ground-based operations such as start-up, idle, preflight run-up checks, taxi

and the take-off roll on the runway, may deposit to the local environment and/or infiltrate into buildings.¹³⁴ ¹³⁵

The Lead AQCDs summarize the literature reporting on the atmospheric chemical transformation of lead compounds emitted by engines operating on leaded fuel. Briefly, lead halides emitted by motor vehicles operating on leaded fuel were reported to undergo compositional changes upon cooling and mixing with the ambient air as well as during transport, and we would anticipate lead bromides emitted by piston-engine aircraft to behave similarly in the atmosphere. The water solubility of these lead-bearing particles was reported to be higher for the smaller lead-bearing particles.¹³⁶ Lead halides emitted in motor vehicle exhaust were reported to break down rapidly in the atmosphere via redox reactions in the presence of atmospheric acids.¹³⁷ Depending on ambient conditions (*e.g.*, ozone and hydroxyl concentrations in the atmosphere), alkyl lead may exist in the atmosphere for hours to days¹³⁸ and may therefore be transported off airport property into nearby communities. Tetraethyl lead reacts with the hydroxyl radical in the gas phase to form a variety of products that include ionic trialkyl lead, dialkyl lead and metallic lead. Trialkyl lead is slow to react with the hydroxyl radical and is quite persistent in the atmosphere.¹³⁹

b. Deposition of Lead Emissions From Piston-Engine Aircraft and Soil Lead Concentrations to Which Piston-Engine Aircraft May Contribute

Lead is removed from the atmosphere and deposited on soil, into aquatic systems and on other surfaces via wet or dry deposition.¹⁴⁰ Meteorological factors (*e.g.*, wind speed, convection, rain, humidity) influence local deposition rates. With regard to

deposition of lead from aircraft engine emissions, the EPA modeled the deposition rate for aircraft lead emissions at one airport in a temperate climate in California with dry summer months. In this location, the average lead deposition rate from aircraft emissions of lead was 0.057 milligrams per square meter per year.¹⁴¹

Studies summarized in the 2013 Lead ISA suggest that soil is a reservoir for contemporary and historical emissions of lead to air.¹⁴² Once deposited to soil, lead can be absorbed onto organic material, can undergo chemical and physical transformation depending on a number of factors (*e.g.*, pH of the soil and the soil organic content), and can participate in further cycling through air or other media.¹⁴³ The extent of atmospheric deposition of lead from aircraft engine emissions would be expected to depend on a number of factors including the size of the particles emitted (smaller particles, such as those in aircraft emissions, have lower settling velocity and may travel farther distances before being deposited compared with larger particles), the temperature of the exhaust (the high temperature of the exhaust creates plume buoyancy), as well as meteorological factors (*e.g.*, wind speed, precipitation rates). As a result of the size of the lead particulate matter emitted from piston-engine aircraft and as a result of these emissions occurring at various altitudes, lead emitted from these aircraft may distribute widely through the environment.¹⁴⁴ Murphy et al. (2008) reported weekend increases in ambient air lead concentrations monitored at remote locations in the U.S. that the authors hypothesized were related to weekend increases in piston-engine powered general aviation activity.¹⁴⁵

Heiken et al. (2014) assessed air lead concentrations potentially attributable to resuspended lead that previously deposited onto soil relative to air lead concentrations resulting directly from

¹³⁰ These concentration estimates are not used for comparison to the level of the Lead NAAQS due to different temporal averaging times and underlying assumptions in modeling. The AirToxScreen estimates are provided to help state, local and Tribal air agencies and the public identify which pollutants, emission sources and places they may wish to study further to better understand potential risks to public health from air toxics. There are uncertainties inherent in these estimates described by the EPA, some of which are relevant to these estimates of lead concentrations; however, these estimates provide perspective on the potential influence of piston-engine emissions of lead on air quality. See <https://www.epa.gov/AirToxScreen/airtoxscreen-limitations>.

¹³¹ As airports are generally in larger census blocks within a census tract, concentrations for airport blocks dominate the area-weighted average in cases where an airport is the predominant lead emissions source in a census tract.

¹³² Swiss FOCA (2007) Aircraft Piston Engine Emissions Summary Report. 33-05-003 Piston Engine Emissions. Swiss FOCA Summary. Report_070612.rit. Available at <https://www.bazl.admin.ch/bazl/en/home/specialists/regulations-and-guidelines/environment/pollutant-emissions-aircraft-engine-emissions/report-appendices--database--and-data-sheets.html>. Retrieved on June 15, 2022.

¹³³ Griffith 2020. Electron microscopic characterization of exhaust particles containing lead dibromide beads expelled from aircraft burning leaded gasoline. *Atmospheric Pollution Research* 11:1481–1486.

¹³⁴ EPA (2013) ISA for Lead. Section 1.3.

“Exposure to Ambient Pb.” p. 1–11. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

¹³⁵ The EPA received comments on the information provided in this section to which we respond in the Response to Comments document for this action.

¹³⁶ EPA (1977) Air Quality Criteria for Lead. Section 6.2.2.1. EPA, Washington, DC, EPA-600/8-77-017, 1977.

¹³⁷ EPA (2006) Air Quality Criteria for Lead. Section E.6. EPA, Washington, DC, EPA/600/R-5/144aF, 2006.

¹³⁸ EPA (2006) Air Quality Criteria for Lead. Section E.6. p. 2–5. EPA, Washington, DC, EPA/600/R-5/144aF, 2006.

¹³⁹ EPA (2006) Air Quality Criteria for Lead. Section 2. EPA, Washington, DC, EPA/600/R-5/144aF, 2006.

¹⁴⁰ EPA (2013) ISA for Lead. Section 1.2.1. “Sources, Fate and Transport of Ambient Pb;” p. 1–6; and Section 2.3. “Fate and Transport of Pb.” p. 2–24 through 2–25. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

¹⁴¹ Memorandum to Docket EPA-HQ-OAR-2022-0389. Deposition of Lead Emitted by Piston-engine Aircraft. June 15, 2022. Docket ID EPA-HQ-2022-0389.

¹⁴² EPA (2013) ISA for Lead. Section 2.6.1. “Soils.” p. 2–118. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

¹⁴³ EPA (2013) ISA for Lead. Chapter 6. “Ecological Effects of Pb.” p. 6–57. EPA, Washington, DC, EPA/600/R-10/075F, 2013.

¹⁴⁴ Murphy et al., 2008. Weekly patterns of aerosol in the United States. *Atmospheric Chemistry and Physics*. 8:2729–2739.

¹⁴⁵ Lead concentrations collected as part of the Interagency Monitoring of Protected Visual Environments (IMPROVE) network and the National Oceanic and Atmospheric Administration (NOAA) monitoring sites.

aircraft engine emissions.¹⁴⁶ Based on comparisons of lead concentrations in total suspended particulate (TSP) and fine particulate matter (PM_{2.5}) measured at the three airports, coarse particle lead was observed to account for about 20–30 percent of the lead found in TSP. The authors noted that based on analysis of lead isotopes present in the air samples collected at these airports, the original source of the lead found in the coarse particle range appeared to be from aircraft exhaust emissions of lead that previously deposited to soil and were resuspended by wind or aircraft-induced turbulence. Results from lead isotope analysis in soil samples collected at the same three airports led the authors to conclude that lead emitted from piston-engine aircraft was not the dominant source of lead in soil in the samples measured at the airports they studied. The authors note the complex history of topsoil can create challenges in understanding the extent to which aircraft lead emissions impact soil lead concentrations at and near airports (e.g., the source of topsoil can change as a result of site renovation, construction, landscaping, natural events such as wildfire and hurricanes, and other activities). Concentrations of lead in soil at and near airports servicing piston-engine aircraft have been measured using a range of approaches.^{147 148 149 150 151 152} Kavouras et al. (2013) collected soil samples at three airports and reported that construction at an airport involving

removal and replacement of topsoil complicated interpretation of the findings at that airport and that the number of runways at an airport may influence resulting lead concentrations in soil (i.e., multiple runways may provide for more wide-spread dispersal of the lead over a larger area than that potentially affected at a single-runway airport).

c. Potential for Lead Emissions From Piston-Engine Aircraft To Impact Agricultural Products

Studies conducted near stationary sources of lead emissions (e.g., smelters) have shown that atmospheric lead sources can lead to contamination of agricultural products, such as vegetables.^{153 154} In this way, air lead sources may contribute to dietary exposure pathways.¹⁵⁵ As described in section II.A.1. of this document, piston-engine aircraft are used in the application of pesticides, fertilizers and seeding crops for human and animal consumption and, as such, provide a potential route of exposure for lead in food. To minimize drift of pesticides and other applications from the intended target, pilots are advised to maintain a height between eight and 12 feet above the target crop during application.¹⁵⁶ An unintended consequence of this practice is that exhaust emissions of lead have a substantially increased potential for directly depositing on vegetation and surrounding soil. Lead halides, the primary form of lead emitted by engines operating on leaded fuel,¹⁵⁷ are slightly water soluble and, therefore, may be more readily absorbed by plants than other forms of inorganic lead.

The 2006 AQCD indicated that surface deposition of lead onto plants may be significant.¹⁵⁸ Atmospheric

deposition of lead provides a pathway for lead in vegetation as a result of contact with above-ground portions of the plant.^{159 160 161} Livestock may subsequently be exposed to lead in vegetation (e.g., grasses and silage) and in surface soils via incidental ingestion of soil while grazing.¹⁶²

d. Potential for Lead Emissions From Piston-Engine Aircraft To Impact Aquatic Ecosystems

As discussed in section 6.4 of the 2013 Lead ISA, lead bioaccumulates in the tissues of aquatic organisms through ingestion of food and water or direct uptake from the environment (e.g., across membranes such as gills or skin).¹⁶³ Alkyl lead, in particular, has been identified by the EPA as a Persistent, Bioaccumulative, and Toxic (PBT) pollutant.¹⁶⁴ There are 527 seaport facilities in the U.S., and landing and take-off activity by seaplanes at these facilities provides a direct pathway for emission of organic and inorganic lead to the air near/above inland waters and ocean seaports where these aircraft operate.¹⁶⁵ Inland airports may also provide a direct pathway for emission of organic and inorganic lead to the air near/above inland waters. Lead emissions from piston-engine aircraft operating at seaplane facilities as well as airports and heliports near water bodies can enter the aquatic ecosystem by either deposition from ambient air or runoff of lead deposited to surface soils.

In addition to deposition of lead from engine emissions by piston-powered aircraft, lead may enter aquatic systems from the pre-flight inspection of the fuel for contaminants that pilots conduct. While some pilots return the checked fuel to their fuel tank or dispose of it in a receptacle provided on the airfield, some pilots discard the fuel onto the tarmac, ground, or water, in the case of

¹⁴⁶ Heiken et al., 2014. ACRP Web-Only Document 21: Quantifying Aircraft Lead Emissions at Airports. Contractor's Final Report for ACRP 02–34. Available at <https://www.trb.org/Publications/Blurbs/172599.aspx>.

¹⁴⁷ McCumber and Strevett 2017. A Geospatial Analysis of Soil Lead Concentrations Around Regional Oklahoma Airports. *Chemosphere* 167:62–70.

¹⁴⁸ Kavouras et al., 2013. Bioavailable Lead in Topsoil Collected from General Aviation Airports. *The Collegiate Aviation Review International* 31(1):57–68. Available at <https://doi.org/10.22488/okstate.18.100438>.

¹⁴⁹ Heiken et al., 2014. ACRP Web-Only Document 21: Quantifying Aircraft Lead Emissions at Airports. Contractor's Final Report for ACRP 02–34. Available at <https://www.trb.org/Publications/Blurbs/172599.aspx>.

¹⁵⁰ EPA (2010) Development and Evaluation of an Air Quality Modeling Approach for Lead Emissions from Piston-Engine Aircraft Operating on Leaded Aviation Gasoline. EPA, Washington, DC, EPA–420–R–10–007, 2010. <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1007H4Q.PDF?Dockey=P1007H4Q.PDF>.

¹⁵¹ Environment Canada (2000) Airborne Particulate Matter, Lead and Manganese at Buttonville Airport. Toronto, Ontario, Canada: Conor Pacific Environmental Technologies for Environmental Protection Service, Ontario Region.

¹⁵² Lejano and Ericson 2005. Tragedy of the Temporal Commons: Soil-Bound Lead and the Anachronicity of Risk. *Journal of Environmental Planning and Management*. 48(2):301–320.

¹⁵³ EPA (2013) ISA for Lead. Section 3.1.3.3. “Dietary Pb Exposure.” p. 3–20 through 3–24. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

¹⁵⁴ EPA (2006) Air Quality Criteria for Lead. Section 8.2.2. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

¹⁵⁵ EPA (2006) Air Quality Criteria for Lead. Section 8.2.2. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

¹⁵⁶ O'Connor-Marer. Aerial Applicator's Manual: A National Pesticide Applicator Certification Study Guide. p. 40. National Association of State Departments of Agriculture Research Foundation. Available at <https://www.epa.gov/system/files/documents/2022-09/national-pesticide-applicator-cert-core-manual-2014.pdf>.

¹⁵⁷ The additive used in the fuel to scavenge lead determines the chemical form of the lead halide emitted; because ethylene dibromide is added to leaded aviation gasoline used in piston-engine aircraft, the lead halide emitted is in the form of lead dibromide.

¹⁵⁸ EPA (2006) Air Quality Criteria for Lead. pp. 7–9 and AXZ7–39 (citing U.S. studies of the 1990s). EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

¹⁵⁹ EPA (2006) Air Quality Criteria for Lead. p. AXZ7–39. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

¹⁶⁰ EPA (1986) Air Quality Criteria for Lead. Sections 6.5.3. EPA, Washington, DC, EPA–600/8–83/028aF–dF (NTIS PB87142386), 1986.

¹⁶¹ EPA (1986) Air Quality Criteria for Lead. Section 7.2.2.2.1. EPA, Washington, DC, EPA–600/8–83/028aF–dF (NTIS PB87142386), 1986.

¹⁶² EPA (1986) Air Quality Criteria for Lead. Section 7.2.2.2.2. EPA, Washington, DC, EPA–600/8–83/028aF–dF (NTIS PB87142386), 1986.

¹⁶³ EPA (2013) ISA for Lead. Section 6.4.2. “Biogeochemistry and Chemical Effects of Pb in Freshwater and Saltwater Systems.” p. 6–147. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

¹⁶⁴ EPA (2002) Persistent, Bioaccumulative, and Toxic Pollutants (PBT) Program. PBT National Action Plan for Alkyl-Pb. Washington, DC. June. 2002.

¹⁶⁵ See FAA's NASR. Available at https://www.faa.gov/air_traffic/flight_info/aeronav/aero_data/eNASR_Browser/.

a fuel check being conducted on a seaplane. Lead in the fuel discarded to the environment may evaporate to the air and may be taken up by the surface on which it is discarded. Lead on tarmac or soil surfaces is available for runoff to surface water. Tetraethyl lead in the avgas directly discarded to water will be available for uptake and bioaccumulation in aquatic life. The National Academy of Sciences Airport Cooperative Research Program (ACRP) conducted a survey study of pilots' fuel sampling and disposal practices. Among the 146 pilots responding to the survey, 36 percent indicated they discarded all fuel check samples to the ground regardless of contamination status, and 19 percent of the pilots indicated they discarded only contaminated fuel to the ground.¹⁶⁶ Leaded avgas discharged to the ground and water includes other hazardous fuel components such as ethylene dibromide.¹⁶⁷

5. Consideration of Environmental Justice and Children in Populations Residing Near Airports

This section provides a description of how many people live in close proximity to airports where they may be exposed to airborne lead from aircraft engine emissions of lead (referred to here as the "near-airport" population). This section also provides the demographic composition of the near-airport population, with attention to implications related to environmental justice (EJ) and the population of children in this near-source environment.¹⁶⁸

Executive Order 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All," defines environmental justice as "the just treatment and meaningful involvement

of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices."¹⁶⁹ Providing this information regarding potential EJ implications in the population living near airports is important for purposes of public information and awareness. Here, EPA finds that blood lead levels in children from low-income households remain higher than those in children from higher income households, and blood lead levels in Black children are higher than those in non-Hispanic White children.^{170 171 172}

¹⁶⁹ See, <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>. When the analysis discussed in this section was performed, EPA defined environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental and commercial operations or programs and policies." Meaningful involvement occurs when "1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity [e.g., rulemaking] that will affect their environment and/or health; 2) the public's contribution can influence the regulatory Agency's decision; 3) the concerns of all participants involved will be considered in the decision-making process; and 4) [the EPA will] seek out and facilitate the involvement of those potentially affected." See, EPA's Guidance on Considering Environmental Justice During the Development of Regulatory Actions. Available at <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>. See also <https://www.epa.gov/environmentaljustice>.

¹⁷⁰ EPA (2013) ISA for Lead. Section 5.4. "Summary," p. 5–40. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

¹⁷¹ EPA. America's Children and the Environment. Summary of blood lead levels in children updated in 2022, available at <https://www.epa.gov/americaschildrenenvironment/biomonitoring-lead>. Data source: Centers for Disease Control and Prevention, National Report on Human

The analysis described here provides information regarding whether some demographic groups are more highly represented in the near-airport environment compared with people who live farther from airports.¹⁷³ Residential proximity to airports implies that there is an increased potential for exposure to lead from covered aircraft engine emissions.¹⁷⁴ As described in section II.A.3. of this document, several studies have measured higher concentrations of lead in air near airports with piston-engine aircraft activity. Additionally, as noted in section II.A. of this document, three studies have reported increased blood lead levels in children with increasing proximity to airports.^{175 176 177}

We first summarize here the literature on disparity among near-airport populations. Then we describe the analyses the EPA conducted to evaluate potential disparity in the population groups living near runways where piston-engine aircraft operate compared to those living elsewhere.

Numerous studies have found that environmental hazards such as air pollution are more prevalent in areas where people of color and low-income populations represent a higher fraction

Exposure to Environmental Chemicals. Blood Lead (2011–2018). Updated March 2022. Available at https://www.cdc.gov/exposurereport/report/pdf/cgroup2_LBXPBP_2011-p.pdf.

¹⁷² The relative contribution of lead emissions from covered aircraft engines to these disparities has not been determined and is not a goal of the evaluation described here.

¹⁷³ This analysis used the U.S. Census and demographic data from 2010 which was the most recent data available at the time of this assessment.

¹⁷⁴ Residential proximity to a source of a specific air pollutant(s) is a widely used surrogate measure to evaluate the potential for higher exposures to that pollutant (EPA 2016 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. Section 4.2.1). Data presented in section II.A.3. demonstrate that lead concentrations in air near the runup area can exceed the lead NAAQS and concentrations decrease sharply with distance from the ground-based aircraft exhaust and vary with the amount of aircraft activity at an airport. Not all people living within 500 meters of a runway are expected to be equally exposed to lead.

¹⁷⁵ Miranda et al., 2011. A Geospatial Analysis of the Effects of Aviation Gasoline on Childhood Blood Lead Levels. *Environmental Health Perspectives*. 119:1513–1516.

¹⁷⁶ Zahran et al., 2017. The Effect of Leaded Aviation Gasoline on Blood Lead in Children. *Journal of the Association of Environmental and Resource Economists*. 4(2):575–610.

¹⁷⁷ Zahran et al., 2022. Leaded Aviation Gasoline Exposure Risk and Child Blood Lead Levels. *Proceedings of the National Academy of Sciences Nexus*. 2:1–11.

¹⁶⁶ National Academies of Sciences, Engineering, and Medicine 2014. Best Practices for General Aviation Aircraft Fuel-Tank Sampling. Washington, DC: The National Academies Press. <https://doi.org/10.17226/22343>.

¹⁶⁷ Memorandum to Docket EPA–HQ–OAR–2022–0389. Potential Exposure to Non-exhaust Lead and Ethylene Dibromide. June 15, 2022. Docket ID EPA–HQ–2022–0389.

¹⁶⁸ As described in this section, the EPA evaluated environmental justice consistent with the EPA 2016 Technical Guidance. However, the final decisions in this action are based on EPA's consideration under CAA section 231(a)(2)(A) of potential risks to public health and welfare from the lead air pollution, as well as its evaluation of whether emissions of lead from engines in covered aircraft contribute to that air pollution. See section III. for further discussion of the statutory authority for this action and sections IV. and V. for further discussion of the basis for these findings.

of the population compared with the general population, including near transportation sources.^{178 179 180 181 182} The literature includes studies that have reported on communities in close proximity to airports that are disproportionately represented by people of color and low-income populations. McNair (2020) described nineteen major airports that underwent capacity expansion projects between 2000 and 2010, thirteen of which had a large concentration or presence of persons of color, foreign-born persons or low-income populations nearby.¹⁸³ Woodburn (2017) reported on changes in communities near airports from 1970–2010, finding suggestive evidence that at many hub airports over time, the presence of marginalized groups residing in close proximity to airports increased.¹⁸⁴ Rissman et al. (2013) reported that with increasing proximity to the Hartsfield-Jackson Atlanta International Airport, exposures to particulate matter were higher, and there were lower home values, income, education, and percentage of white residents.¹⁸⁵

The EPA used two approaches to understand whether some members of the population (e.g., children five and under, people of color, indigenous populations, low-income populations) represent a larger share of the people living in proximity to airports where piston-engine aircraft operate compared with people who live farther away from these airports. In the first approach, we evaluated people living within, and

children attending school within, 500 meters of all of the approximately 20,000 airports in the U.S., using methods described in the EPA's report titled "National Analysis of the Populations Residing Near or Attending School Near U.S. Airports."¹⁸⁶ In the second approach, we evaluated people living near the NPIAS airports in the conterminous 48 states. As noted in section II.A.1. of this document, the NPIAS airports support the majority of piston-engine aircraft activity that occurs in the U.S. Among the NPIAS airports, we compared the demographic composition of people living within one kilometer of runways with the demographic composition of people living at a distance of one to five kilometers from the same airports.

The distances analyzed for those people living closest to airports (i.e., distances of 500 meters and 1,000 meters) were chosen for evaluation following from the air quality monitoring and modeling data presented in section II.A.3. of this document. Specifically, the EPA's modeling and monitoring data indicate that concentrations of lead from piston-engine aircraft emissions can be elevated above background levels at distances of 500 meters over a rolling three-month period. On individual days, concentrations of lead from piston-engine aircraft emissions can be elevated above background levels at distances of 1,000 meters downwind of a runway, depending on aircraft activity and prevailing wind direction.^{187 188 189}

Because the U.S. has a dense network of airports, many of which have neighboring communities, we quantified the number of people living and children attending school within 500 meters of the approximately 20,000 airports in the U.S.¹⁹⁰ From this

analysis, the EPA estimates that approximately 5.2 million people live within 500 meters of an airport runway, 363,000 of whom are children aged five and under. The EPA also estimates that 573 schools attended by 163,000 children in kindergarten through twelfth grade are within 500 meters of an airport runway.¹⁹¹

In order to identify potential disparities in the near-airport population, we also evaluated populations at the state level. Using the U.S. Census population data for each state in the U.S., we compared the percent of people by age, race and indigenous peoples (i.e., children five and under, Black, Asian, and Native American or Alaska Native) living within 500 meters of an airport runway with the percent by age, race, and indigenous peoples comprising the state population.¹⁹² Using the methodology described in Clarke (2022), the EPA identified states in which children, Black, Asian, and Native American or Alaska Native populations represent a greater fraction of the population living within 500 meters of a runway compared with the percent of these groups in the state population.¹⁹³ Results of this analysis are presented in the following tables.¹⁹⁴ This state-level analysis presents summary information for a subset of potentially relevant demographic characteristics. We present data in this section regarding a wider array of demographic characteristics when evaluating populations living near NPIAS airports.

Among children five and under, there were three states (Nevada, South Carolina, and South Dakota) in which the percent of children five and under

¹⁷⁸ Rowangould 2013. A census of the near-roadway population: public health and environmental justice considerations. *Transportation Research Part D* 25:59–67. <https://dx.doi.org/10.1016/j.trd.2013.08.003>.

¹⁷⁹ Marshall et al., 2014. Prioritizing environmental justice and equality: diesel emissions in Southern California. *Environmental Science & Technology* 48: 4063–4068. <https://doi.org/10.1021/es405167f>.

¹⁸⁰ Marshall 2008. Environmental inequality: air pollution exposures in California's South Coast Air Basin. *Atmospheric Environment* 21:5499–5503. <https://doi.org/10.1016/j.atmosenv.2008.02.005>.

¹⁸¹ Tessum et al., 2021. PM_{2.5} pollutants disproportionately and systemically affect people of color in the United States. *Science Advances* 7:eabf4491.

¹⁸² Mohai et al., 2009. Environmental justice. *Annual Reviews* 34:405–430. Available at <https://doi.org/10.1146/annurev-environ-082508-094348>.

¹⁸³ McNair 2020. Investigation of environmental justice analysis in airport planning practice from 2000 to 2010. *Transportation Research Part D* 81:102286.

¹⁸⁴ Woodburn 2017. Investigating neighborhood change in airport-adjacent communities in multi-airport regions from 1970 to 2010. *Journal of the Transportation Research Board*, 2626, 1–8.

¹⁸⁵ Rissman et al., 2013. Equity and health impacts of aircraft emissions at the Hartsfield-Jackson Atlanta International Airport. *Landscape and Urban Planning*, 120: 234–247.

¹⁸⁶ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹⁸⁷ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. EPA, Washington, DC, EPA-420-R-20-003, 2020.

¹⁸⁸ Carr et al., 2011. Development and evaluation of an air quality modeling approach to assess near-field impacts of lead emissions from piston-engine aircraft operating on leaded aviation gasoline. *Atmospheric Environment*, 45 (32), 5795–5804. DOI: <https://dx.doi.org/10.1016/j.atmosenv.2011.07.017>.

¹⁸⁹ We do not assume or expect that all people living within 500m or 1,000m of a runway are exposed to lead from piston-engine aircraft emissions, and the wide range of activity of piston-engine aircraft at airports nationwide suggests that exposure to lead from aircraft emissions is likely to vary widely.

¹⁹⁰ In this analysis, we included populations living in census blocks that intersected the 500-meter buffer around each runway in the U.S. Potential uncertainties in this approach are described in our report National Analysis of the

Populations Residing Near or Attending School Near U.S. Airports. EPA-420-R-20-001, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG4A.pdf>, and in the EPA responses to peer review comments on the report, available here: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YISM.pdf>.

¹⁹¹ EPA (2020) National Analysis of the Populations Residing Near or Attending School Near U.S. Airports. EPA-420-R-20-001. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG4A.pdf>.

¹⁹² Clarke. Memorandum to Docket EPA-HQ-OAR-2022-0389. Estimation of Population Size and Demographic Characteristics among People Living Near Airports by State in the United States. May 31, 2022. Docket ID EPA-HQ-2022-0389.

¹⁹³ Clarke. Memorandum to Docket EPA-HQ-OAR-2022-0389. Estimation of Population Size and Demographic Characteristics among People Living Near Airports by State in the United States. May 31, 2022. Docket ID EPA-HQ-2022-0389.

¹⁹⁴ These data are presented in tabular form for all states in this memorandum located in the docket: Clarke. Memorandum to Docket EPA-HQ-OAR-2022-0389. Estimation of Population Size and Demographic Characteristics among People Living Near Airports by State in the United States. May 31, 2022. Docket ID EPA-HQ-2022-0389.

living within 500 meters of a runway represents a greater fraction of the

population by a difference of one percent or greater compared with the

percent of children five and under in the state population (Table 3).

TABLE 3—THE POPULATION OF CHILDREN FIVE YEARS AND UNDER WITHIN 500 METERS OF AN AIRPORT RUNWAY COMPARED TO THE STATE POPULATION OF CHILDREN FIVE YEARS AND UNDER

State	Percent of children aged five years and under within 500 meters	Percent of children aged five years and under within the state	Number of children aged five years and under within 500 meters	Number of children aged five years and under in the state
Nevada	10	8	1000	224,200
South Carolina	9	8	400	361,400
South Dakota	11	9	3,000	71,300

There were nine states in which the Black population represented a greater fraction of the population living in the

near-airport environment by a difference of one percent or greater compared with the state as a whole. These states were

California, Kansas, Kentucky, Louisiana, Mississippi, Nevada, South Carolina, West Virginia, and Wisconsin (Table 4).

TABLE 4—THE BLACK POPULATION WITHIN 500 METERS OF AN AIRPORT RUNWAY AND THE BLACK POPULATION, BY STATE

State	Percent black within 500 meters	Percent black within the state	Black population within 500 meters	Black population in the state
California	8	7	18,981	2,486,500
Kansas	8	6	1,240	173,300
Kentucky	9	8	3,152	342,800
Louisiana	46	32	14,669	1,463,000
Mississippi	46	37	8,542	1,103,100
Nevada	12	9	1,794	231,200
South Carolina	31	28	10,066	1,302,900
West Virginia	10	3	1,452	63,900
Wisconsin	9	6	4,869	367,000

There were three states with a greater fraction of Asians in the near-airport

environment compared with the state as a whole by a difference of one percent

or greater: Indiana, Maine, and New Hampshire (Table 5).

TABLE 5—THE ASIAN POPULATION WITHIN 500 METERS OF AN AIRPORT RUNWAY AND THE ASIAN POPULATION, BY STATE

State	Percent asian within 500 meters	Percent asian within the state	Asian population within 500 meters	Asian population in the state
Indiana	4	2	1,681	105,500
Maine	2	1	406	13,800
New Hampshire	4	2	339	29,000

There were five states (Alaska, Arizona, Delaware, South Dakota, and New Mexico) where the near-airport population had greater representation by Native Americans and Alaska Natives compared with the portion of

the population they comprise at the state level by a difference of one percent or greater. In Alaska, the disparity in residential proximity to a runway was the largest: 16,020 Alaska Natives were estimated to live within 500 meters of

a runway, representing 48 percent of the population within 500 meters of an airport runway. In contrast, Alaska Natives comprise 15 percent of the Alaska state population (Table 6).

TABLE 6—THE NATIVE AMERICAN AND ALASKA NATIVE POPULATION WITHIN 500 METERS OF AN AIRPORT RUNWAY AND THE NATIVE AMERICAN AND ALASKA NATIVE POPULATION, BY STATE

State	Percent Native American and Alaska Native within 500 meters	Percent Native American and Alaska Native within the state	Native American and Alaska Native population within 500 meters	Native American and Alaska Native population in the state
Alaska	48	15	16,020	106,300
Arizona	18	5	5,017	335,300
Delaware	2	1	112	5,900
New Mexico	21	10	2,265	208,900
South Dakota	22	9	1,606	72,800

In a separate analysis, the EPA focused on evaluating the potential for disparities in populations residing near the NPIAS airports. The EPA compared the demographic composition of people living within one kilometer of runways at 2,022 of the approximately 3,300 NPIAS airports with the demographic composition of people living at a distance of one to five kilometers from the same airports.^{195 196} In this analysis,

over one-fourth of airports (*i.e.*, 515) were identified at which children under five were more highly represented in the zero to one kilometer distance compared with the percent of children under five living one to five kilometers away (Table 7). There were 666 airports where people of color had a greater presence in the zero to one kilometer area closest to airport runways than in populations farther away. There were 761 airports

where people living at less than two-times the Federal Poverty Level represented a higher proportion of the overall population within one kilometer of airport runways compared with the proportion of people living at less than two times the Federal Poverty Level among people living one to five kilometers away.

TABLE 7—NUMBER OF AIRPORTS (AMONG THE 2,022 AIRPORTS EVALUATED) WITH DISPARITY FOR CERTAIN DEMOGRAPHIC POPULATIONS WITHIN ONE KILOMETER OF AN AIRPORT RUNWAY IN RELATION TO THE COMPARISON POPULATION BETWEEN ONE AND FIVE KILOMETERS FROM AN AIRPORT RUNWAY

Demographic group	Number of airports with disparity				
	Total airports with disparity	Disparity 1–5%	Disparity 5–10%	Disparity 10–20%	Disparity 20%+
Children under five years of age	515	507	7	1	0
People with income less than twice the Federal Poverty Level	761	307	223	180	51
People of Color (all non-White races, ethnicities and indigenous peoples)	666	377	126	123	40
Non-Hispanic Black	405	240	77	67	21
Hispanic	551	402	85	47	17
Non-Hispanic Asian	268	243	18	4	3
Non-Hispanic Native American or Alaska Native ¹⁹⁷	144	130	6	7	1
Non-Hispanic Hawaiian or Pacific Islander	18	17	1	0	0
Non-Hispanic Other Race	11	11	0	0	0
Non-Hispanic Two or More Races	226	226	0	0	0

To understand the extent of the potential disparity among the 2,022 NPIAS airports, Table 7 provides information about the distribution in the percent differences in the proportion of children, individuals with incomes below two times the Federal Poverty Level, and people of color living within one kilometer of a runway compared with those living one to five kilometers away. For children, Table 7 indicates that for the vast majority of these

airports where there is a higher percentage of children represented in the near-airport population, differences are relatively small (*e.g.*, less than five percent). For the airports where disparity is evident on the basis of poverty, race and ethnicity, the disparities are potentially large, ranging up to 42 percent for those with incomes below two times the Federal Poverty Level, and up to 45 percent for people of color.¹⁹⁸

There are uncertainties in the results provided here inherent to the proximity-based approach used. These uncertainties include the use of block group data to provide population numbers for each demographic group analyzed, and uncertainties in the Census data, including from the use of data from different analysis years (*e.g.*, 2010 Census Data and 2018 income data). These uncertainties are described

¹⁹⁵ For this analysis, we evaluated the 2,022 airports with a population of greater than 100 people inside the zero to one kilometer distance to avoid low population counts distorting the assessment of percent contributions of each group to the total population within the zero to one kilometer distance.

¹⁹⁶ Kamal et al., Memorandum to Docket EPA–HQ–OAR–2022–0389. Analysis of Potential

Disparity in Residential Proximity to Airports in the Conterminous United States. May 24, 2022. Docket ID EPA–HQ–2022–0389. Methods used are described in this memo and include the use of block group resolution data to evaluate the representation of different demographic groups near-airport and for those living one to five kilometers away.

¹⁹⁷ This analysis of 2,022 NPIAS airports did not include airports in Alaska.

¹⁹⁸ Kamal et al., Memorandum to Docket EPA–HQ–OAR–2022–0389. Analysis of Potential Disparity in Residential Proximity to Airports in the Conterminous United States. May 24, 2022. Docket ID EPA–HQ–2022–0389.

and their implications discussed in Kamal et al. (2022).¹⁹⁹

The data summarized in this section indicate that there is a greater prevalence of children under five years of age, an at-risk population for lead effects, within 500 meters or one kilometer of some airports compared to more distant locations. This information also indicates that there is a greater prevalence of people of color and of low-income populations within 500 meters or one kilometer of some airports compared with people living more distant. If such differences were to contribute to disproportionate and adverse impacts on particular communities, they could indicate an EJ concern. Given the number of children in close proximity to runways, including those in communities with EJ concerns, there is a potential for substantial implications for children's health, depending on lead exposure levels and associated risk.

Some commenters on the proposed findings expressed concern that communities in close proximity to general aviation airports are often low-income communities and communities of color who are disproportionately burdened by lead exposure.²⁰⁰ Some commenters also noted that children who attend school near airports may experience higher levels of exposure compared with children who attend school more distant from an airport, and they cite recent research reporting higher blood lead levels in children who attend school near one highly active general aviation airport.²⁰¹ The EPA responds to these comments in the Response to Comments document for this action.

B. Federal Actions To Reduce Lead Exposure

The Federal Government has a longstanding commitment to programs to reduce exposure to lead, particularly for children. In December 2018, the

President's Task Force on Environmental Health Risks and Safety Risks to Children released the Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts (Federal Lead Action Plan), detailing the Federal Government's commitments and actions to reduce lead exposure in children, some of which are described in this section.²⁰² Building on the 2018 Federal Lead Action Plan, in October 2022, the EPA finalized its Strategy to Reduce Lead Exposures and Disparities in U.S. Communities (Lead Strategy).²⁰³ The Lead Strategy describes the EPA-wide and government-wide approaches to strengthen public health protections, address legacy lead contamination for communities with the greatest exposures, and promote environmental justice. In this section, we describe some of the EPA's actions to reduce lead exposures from air, water, lead-based paint, and contaminated sites.

In 1976, the EPA listed lead under CAA section 108, making it what is called a "criteria air pollutant."²⁰⁴ Once lead was listed, the EPA issued primary and secondary NAAQS under sections 109(b)(1) and (2), respectively. The EPA issued the first NAAQS for lead in 1978 and revised the lead NAAQS in 2008 by reducing the level of the standard from 1.5 micrograms per cubic meter to 0.15 micrograms per cubic meter and form to an average over a consecutive three-month period, as described in 40 CFR 50.16.²⁰⁵ The EPA's 2016 **Federal Register** document describes the Agency's decision to retain the existing Lead NAAQS.²⁰⁶ The Lead NAAQS is currently undergoing review.^{207 208}

²⁰² Federal Lead Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts. (2018) President's Task Force on Environmental Health Risks and Safety Risks to Children. Available at https://www.epa.gov/sites/default/files/2018-12/documents/fedactionplan_lead_final.pdf.

²⁰³ EPA (2022) EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities. EPA 540R22006. Available at https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy_1.pdf.

²⁰⁴ 41 FR 14921 (April 8, 1976). See also, e.g., 81 FR 71910 (Oct. 18, 2016) for a description of the history of the listing decision for lead under CAA section 108.

²⁰⁵ 73 FR 66965 (Nov. 12, 2008).

²⁰⁶ 81 FR 71912–71913 (Oct. 18, 2016).

²⁰⁷ Documents pertaining to the current review of the NAAQS for Lead can be found here: <https://www.epa.gov/naaqs/lead-pb-air-quality-standards>.

²⁰⁸ The EPA released the ISA for Lead, External Review Draft, as part of the Agency's current review of the science regarding health and welfare effects of lead. EPA/600/R-23/061. This draft assessment is undergoing peer review by the Clean Air Scientific Advisory Committee (CASAC) and public comment, and is available at: <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=357282>.

States are primarily responsible for ensuring attainment and maintenance of the NAAQS. Under section 110 of the Act and related provisions, states are to submit, for the EPA's review and, if appropriate, approval, state implementation plans that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved.

Additional EPA programs to address lead in the environment include the prohibition on gasoline containing lead or lead additives for highway use under section 211 of the Act; the new source performance standards under section 111 of the Act; and emissions standards for solid waste incineration units and the national emission standards for hazardous air pollutants (NESHAP) under sections 129 and 112 of the Act, respectively.

The EPA has taken a number of actions associated with these air pollution control programs, including completion of several regulations requiring reductions in lead emissions from stationary sources regulated under the CAA sections 111, 112 and 129. For example, in January 2012, the EPA updated the NESHAP for the secondary lead smelting source category.²⁰⁹ These amendments to the original maximum achievable control technology standards apply to facilities nationwide that use furnaces to recover lead from lead-bearing scrap, mainly from automobile batteries. Regulations completed in 2013 for commercial and industrial solid waste incineration units also require reductions in lead emissions.²¹⁰ In February 2023, the EPA finalized amendments to the NSPS (as a new subpart) and the Area Source NESHAP for the Lead Acid Battery Manufacturing source category.²¹¹ The amendments to the standards for affected processes including grid casting, lead reclamation, and paste mixing operations at lead acid battery facilities will result in reductions in lead emissions and improvements in compliance assurance measures.

A broad range of Federal programs beyond those that focus on air pollution control provide for nationwide reductions in environmental releases and human exposures to lead. For example, pursuant to section 1417 of the Safe Drinking Water Act (SDWA), any pipe, pipe or plumbing fitting or fixture, solder, or flux may not be used in new installations or repairs of any public water system or plumbing in a

²⁰⁹ 77 FR 555 (Jan. 5, 2012).

²¹⁰ 78 FR 9112 (Feb. 7, 2013).

²¹¹ 88 FR 11556 (Feb. 23, 2023).

¹⁹⁹ Kamal et al., Memorandum to Docket EPA–HQ–OAR–2022–0389. Analysis of Potential Disparity in Residential Proximity to Airports in the Conterminous United States. May 24, 2022. Docket ID EPA–HQ–2022–0389.

²⁰⁰ During the public comment period on the proposed findings for this action, commenters provided an additional evaluation of populations living near airports that they conclude to indicate that disparity by race and income is larger and occurs more frequently at airports that have the highest lead emissions and the highest residential population density compared with airports where less lead is emitted and population density is lower. This comment is available in the docket at [regulations.gov](https://www.regulations.gov): EPA–HQ–OAR–2022–0389–0238.

²⁰¹ Zahran et al., 2022. Leaded Aviation Gasoline Exposure Risk and Child Blood Lead Levels. *Proceedings of the National Academy of Sciences Nexus*. 2:1–11.

residential or non-residential facility providing water for human consumption or introduced into commerce (except uses for manufacturing or industrial purposes) unless it is considered “lead free” as defined by that Act.²¹² The EPA’s Lead and Copper Rule,²¹³ first promulgated in 1991, regulates lead in public drinking water systems through a treatment technique that requires water systems to monitor drinking water at customer taps and, if an action level is exceeded, undertake a number of actions including those to control corrosion to minimize lead exposure.²¹⁴ On January 15, 2021, the agency published the most recent revisions, the Lead and Copper Rule Revisions (LCRR),²¹⁵ and subsequently reviewed the rule in accordance with Executive Order 13990.²¹⁶ While the LCRR took effect in December 2021, the agency concluded that there are significant opportunities to improve the LCRR.²¹⁷ The EPA is developing a new proposed rule, the Lead and Copper Rule Improvements (LCRI),²¹⁸ to further strengthen the lead drinking water regulations. The EPA identified priority improvements for the LCRI: proactive and equitable lead service line replacement (LSLR), strengthening compliance tap sampling to better identify communities most at risk of lead in drinking water and to compel lead reduction actions, and reducing the complexity of the regulation through improvement of the action and trigger level construct.²¹⁹ The EPA intends to propose and promulgate the LCRI prior to October 16, 2024.

While the EPA continues to improve regulatory actions to reduce lead exposure in drinking water, the EPA recognizes that directly assisting states and communities and providing dedicated funding provided in the Bipartisan Infrastructure Law for lead service line identification and replacement of full lead service lines (LSLs) is also important in safeguarding

public health. The EPA is providing \$15 billion through the Drinking Water State Revolving Fund (DWSRF) dedicated exclusively to lead service line identification and replacement. In addition, \$11.7 billion in DWSRF general supplemental funding, provided by the Bipartisan Infrastructure Law, is going to projects to improve drinking water quality, including those to reduce lead in drinking water. For this funding, states are required to provide 49% as additional subsidization in the form of principal forgiveness and/or grants. States must provide additional subsidization to water systems that meet the state’s disadvantaged community criteria as described in section 1452(d) of SDWA, furthering the objectives of the Justice40 Initiative. In October 2022, the EPA announced projects selected to receive over \$30 million in grant funding that will help communities and schools address lead in drinking water and remove lead pipes across the country in underserved and other disadvantaged communities through the Water Infrastructure Improvements for the Nation Act’s Reducing Lead in Drinking Water grant program. The EPA recently announced the Lead Service Line Replacement Accelerators initiative which will provide targeted technical assistance to communities in Connecticut, Pennsylvania, New Jersey, and Wisconsin to support expanded access to funding and to accelerate lead pipe replacement. While the EPA is focusing initial efforts in four states, the Agency anticipates this work will serve as a roadmap for additional lead service line replacement efforts across the nation in the future.

Federal programs to reduce exposure to lead in paint, dust, and soil are specified under the comprehensive Federal regulatory framework developed under the Residential Lead-Based Paint Hazard Reduction Act (Title X). Under Title X (codified, in part, as Title IV of the Toxic Substances Control Act [TSCA]), the EPA has established regulations and associated programs in six categories: (1) Training, certification and work practice requirements for persons engaged in lead-based paint activities (abatement, inspection and risk assessment); accreditation of training providers; and authorization of state and Tribal lead-based paint programs; (2) training, certification, and work practice requirements for persons engaged in home renovation, repair and painting (RRP) activities; accreditation of RRP training providers; and authorization of state and Tribal RRP programs; (3) ensuring that, for most housing constructed before 1978,

information about lead-based paint and lead-based paint hazards flows from sellers to purchasers, from landlords to tenants, and from renovators to owners and occupants; (4) establishing standards for identifying dangerous levels of lead in paint, dust and soil; (5) providing grant funding to establish and maintain state and Tribal lead-based paint programs; and (6) providing information on lead hazards to the public, including steps that people can take to protect themselves and their families from lead-based paint hazards.

The most recent rules issued under Title IV of TSCA revised the dust-lead hazard standards (DLHS) and dust-lead clearance levels (DLCL) which were established in a 2001 final rule entitled “Identification of Dangerous Levels of Lead.”²²⁰ The DLHS are incorporated into the requirements and risk assessment work practice standards in the EPA’s Lead-Based Paint Activities Rule, codified at 40 CFR part 745, subpart L. They provide the basis for risk assessors to determine whether dust-lead hazards are present in target housing (*i.e.*, most pre-1978 housing) and child-occupied facilities (pre-1978 nonresidential properties where children 6 years of age or under spend a significant amount of time such as daycare centers and kindergartens). If dust-lead hazards are present, the risk assessor will identify acceptable options for controlling the hazards in the respective property, which may include abatements and/or interim controls. In July 2019, the EPA published a final rule revising the DLHS from 40 micrograms per square foot and 250 micrograms per square foot to 10 micrograms per square foot and 100 micrograms per square foot of lead in dust on floors and windowsills, respectively.²²¹ The DLCL are used to evaluate the effectiveness of a cleaning following an abatement. If the dust-lead levels are not below the clearance levels, the components (*i.e.*, floors, windowsills, troughs) represented by the failed sample(s) shall be recleaned and retested. In January 2021, the EPA published a final rule revising the DLCL to match the DLHS, lowering them from 40 micrograms per square foot and 250 micrograms per square foot to 10 micrograms per square foot and 100 micrograms per square foot on floors and windowsills, respectively.²²² The EPA is now reconsidering the 2019 and 2021 rules in accordance with Executive Order 13990²²³ and in response to a

²¹² Effective in Jan. 2014, the amount of lead permitted in pipes, fittings, and fixtures was lowered. See, section 1417 of the Safe Drinking Water Act: Prohibition on Use of Lead Pipes, Solder, and Flux at <https://www.epa.gov/sdwa/lead-free-pipes-fittings-fixtures-solder-and-flux-drinking-water>.

²¹³ 40 CFR part 141, subpart I (June 7, 1991).

²¹⁴ 40 CFR part 141, subpart I (June 7, 1991).

²¹⁵ 86 FR 4198. (Jan. 15, 2021).

²¹⁶ E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. 86 FR 7037 (Jan. 20, 2021).

²¹⁷ 86 FR 31939 (Dec. 17, 2021).

²¹⁸ See <https://www.epa.gov/ground-water-and-drinking-water/review-national-primary-drinking-water-regulation-lead-and-copper>. Accessed on Nov. 30, 2021.

²¹⁹ 86 FR 31939 (Dec. 17, 2021).

²²⁰ 66 FR 1206 (Jan. 5, 2001).

²²¹ 84 FR 32632 (July 9, 2019).

²²² 86 FR 983 (Jan. 7, 2021).

²²³ 86 FR 7037 (Jan. 20, 2021).

May 2021 decision by U.S. Court of Appeals for the Ninth Circuit. In August 2023, EPA proposed updating the DLHS and DLCL again.²²⁴ If finalized as proposed, the DLHS for floors and window sills would be any reportable level greater than zero, as analyzed by any laboratory recognized by EPA's National Lead Laboratory Accreditation Program. The new DLCL would be 3 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors, 20 $\mu\text{g}/\text{ft}^2$ for window sills and 25 $\mu\text{g}/\text{ft}^2$ for window troughs.

Programs associated with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund)²²⁵ and Resource Conservation Recovery Act (RCRA)²²⁶ also implement removal and remedial response programs that reduce or abate exposures to releases or threatened releases of lead and other hazardous substances. Furthermore, CERCLA section 104(a)(1) authorizes the EPA and other Federal agencies to respond to releases or threatened releases of pollutants or contaminants when the release, or potential release, may present an imminent and substantial danger to the public health or welfare. In addition, CERCLA section 104(a)(1) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) authorize remedial investigations (e.g., monitoring, testing, information collection) and removal actions for hazardous substances, pollutants, or contaminants.

The EPA develops and implements protective levels for lead in soil (and other media when appropriate) at Superfund sites and, together with states, at RCRA corrective action facilities. The Office of Land and Emergency Management develops policy and guidance for addressing multimedia lead contamination and determining appropriate response actions at lead-contaminated sites. Federal programs, including those implementing RCRA, provide for management of hazardous substances such as lead in hazardous and municipal solid waste (e.g., 50 FR 28702, July 15, 1985; 52 FR 45788, December 1, 1987).

C. Lead Endangerment Petitions for Rulemaking and the EPA Responses

The Administrator's final findings further respond to several citizen petitions on this subject, including the

following: petition for rulemaking submitted by Friends of the Earth in 2006, petition for rulemaking submitted by Friends of the Earth, Oregon Aviation Watch and Physicians for Social Responsibility in 2012, petition for reconsideration submitted by Friends of the Earth, Oregon Aviation Watch, and Physicians for Social Responsibility in 2014, and petition for rulemaking from Alaska Community Action on Toxics, Center for Environmental Health, Friends of the Earth, Montgomery-Gibbs Environmental Coalition, Oregon Aviation Watch, the County of Santa Clara, CA, and the Town of Middleton, WI, in 2021. These petitions and the EPA's responses are described more fully in the proposal for this action.^{227 228}

In the most recent of these petitions, submitted in 2021, Alaska Community Action on Toxics, Center for Environmental Health, Friends of the Earth, Montgomery-Gibbs Environmental Coalition, Oregon Aviation Watch, the County of Santa Clara, CA, and the Town of Middleton, WI, again petitioned the EPA to conduct a proceeding under CAA section 231 regarding whether lead emissions from piston-engine aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.²²⁹ The EPA responded in 2022 noting our intent to develop a proposal under CAA section 231(a)(2)(A) regarding whether lead emissions from piston-engine aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, and, after evaluating public comments on the proposal, issue any final determination in 2023, as the Agency is doing in this action.²³⁰

III. Legal Framework for This Action

In this action, the EPA is finalizing two separate determinations—an endangerment finding and a cause or contribute finding—under section 231(a)(2)(A) of the Clean Air Act. The EPA has, most recently, finalized such findings under CAA section 231 for greenhouse gases (GHGs) in 2016 (2016 Findings), and in that action the EPA provided a detailed explanation of the

legal framework for making such findings and the statutory interpretations and caselaw supporting its approach.²³¹ In this final action, the Administrator used the same approach of applying a two-part test under section 231(a)(2)(A) as described in the 2016 Findings and relied on the same interpretations supporting that approach, which are briefly described in this section, and set forth in greater detail in the 2016 Findings.²³² This is also the same approach that the EPA used in making endangerment and cause or contribute findings for GHGs under section 202(a) of the CAA in 2009 (2009 Findings),²³³ which was affirmed by the U.S. Court of Appeals for the D.C. Circuit in 2012.²³⁴ As explained further in the 2016 Findings, the text of the CAA section 231(a)(2)(A), which concerns aircraft emissions, mirrors the text of CAA section 202(a), which concerns motor vehicle emissions and which was the basis for the 2009 Findings.^{235 236} Accordingly, for the same reasons as discussed in the 2016 Findings, the EPA believes it is reasonable to use the same approach under section 231(a)(2)(A)'s similar text as was used under section 202(a) for the 2009 Findings, and it is acting consistently with that framework for purposes of these final findings under section 231.²³⁷ As this approach has

²³¹ 81 FR 54422–54475 (Aug. 15, 2016).

²³² See e.g., 81 FR 55434–54440 (Aug. 15, 2016).

²³³ 74 FR 66505–66510 (Dec. 15, 2009).

²³⁴ *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (*CRR*) (*rev'd in part on other grounds sub nom. Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014)). As discussed in greater detail in the 2016 Findings, the Supreme Court granted some of the petitions for *certiorari* that were filed on *CRR*, while denying others, but agreed to decide only the question: “Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.” 81 FR 54422, 54442 (Aug. 15, 2016). Thus, the Supreme Court did not disturb the D.C. Circuit's holding in *CRR* that affirmed the 2009 Endangerment Finding.

²³⁵ For example, the text in CAA section 202(a) that was the basis for the 2009 Findings addresses “the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Similarly, section 231(a)(2)(A) concerns “the emission of any air pollutant from any class or classes of aircraft engines which in [the Administrator's] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Additional discussion of the parallels in the statutory text and legislative history between CAA section 202(a) and 231(a)(2)(A) can be found in the 2016 Findings. See 81 FR 55434–55437 (Aug. 15, 2016).

²³⁶ 81 FR 55434 (Aug. 15, 2016).

²³⁷ 81 FR 55434 (Aug. 15, 2016).

²²⁷ See <https://www.epa.gov/regulations-emissions-vehicles-and-engines/petitions-and-epa-response-memorandums-related-lead>.

²²⁸ 87 FR 62772 (Oct. 17, 2022).

²²⁹ The 2021 petition is available at <https://www.epa.gov/system/files/documents/2022-01/aviation-leaded-avgas-petition-exhibits-final-2021-10-12.pdf>.

²³⁰ EPA's response to the 2021 petition is available at <https://www.epa.gov/system/files/documents/2022-01/ltr-response-aircraft-lead-petitions-aug-oct-2022-01-12.pdf>.

²²⁴ 88 FR 50444 (August 1, 2023).

²²⁵ For more information about the EPA's CERCLA program, see <https://www.epa.gov/superfund>.

²²⁶ For more information about the EPA's RCRA program, see <https://www.epa.gov/rcra>.

been previously discussed at length in the 2016 Findings, as well as in the 2009 Findings, the EPA provides only a brief description in this final action.

A. Statutory Text and Basis for This Action

Section 231(a)(2)(A) of the CAA provides that the “Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.”²³⁸ In this action, the EPA is addressing the predicate for regulatory action under CAA section 231 through a two-part test, which as noted previously, is the same as the test used in the 2016 Findings under section 231 and in the 2009 Findings under section 202 of the CAA.

As the first step of the two-part test, the Administrator must decide whether, in his judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. As the second step, the Administrator must decide whether, in his judgment, emissions of an air pollutant from certain classes of aircraft engines cause or contribute to this air pollution. If the Administrator answers both questions in the affirmative, he will issue standards under section 231.²³⁹

In accordance with the EPA’s interpretation of the text of section 231(a)(2)(A), as described in the 2016 Findings, the phrase “may reasonably be anticipated” and the term “endanger” in section 231(a)(2)(A) authorize, if not require, the Administrator to act to prevent harm and to act in conditions of uncertainty.²⁴⁰ They do not limit him to merely reacting to harm or to acting

only when certainty has been achieved; indeed, the references to anticipation and to endangerment imply that the failure to look to the future or to less than certain risks would be to abjure the Administrator’s statutory responsibilities. As the D.C. Circuit explained, the language “may reasonably be anticipated to endanger public health or welfare” in CAA section 202(a) requires a “precautionary, forward-looking scientific judgment about the risks of a particular air pollutant, consistent with the CAA’s precautionary and preventive orientation.”²⁴¹ The court determined that “[r]equiring that the EPA find ‘certain’ endangerment of public health or welfare before regulating greenhouse gases would effectively prevent the EPA from doing the job that Congress gave it in [section] 202(a)—utilizing emission standards to prevent reasonably anticipated endangerment from maturing into concrete harm.”²⁴² The same language appears in section 231(a)(2)(A), and the same interpretation applies in that context.

Moreover, by instructing the Administrator to consider whether emissions of an air pollutant cause or contribute to air pollution in the second part of the two-part test, the Act makes clear that he need not find that emissions from any one sector or class of sources are the sole or even the major part of the air pollution considered. This is clearly indicated by the use of the term “contribute.” Further, the phrase “in his judgment” authorizes the Administrator to weigh risks and to consider projections of future possibilities, while also recognizing uncertainties and extrapolating from existing data.

Finally, when exercising his judgment in making both the endangerment and cause-or-contribute findings, the Administrator balances the likelihood and severity of effects. Notably, the phrase “in his judgment” modifies both “may reasonably be anticipated” and “cause or contribute.”

Often, past endangerment and cause or contribute findings have been proposed concurrently with proposed standards under various sections of the CAA, including section 231.²⁴³ Comment has been taken on these proposed findings as part of the notice and comment process for the emission standards.²⁴⁴ However, there is no

requirement that the Administrator propose or finalize the endangerment and cause or contribute findings concurrently with proposed standards and, most recently under section 231, the EPA made endangerment and cause or contribute findings for GHGs separate from, and prior to, proceeding to set standards.

As noted in the proposal,²⁴⁵ the Administrator is applying the procedural provisions of CAA section 307(d) to this action, pursuant to CAA section 307(d)(1)(V), which provides that the provisions of 307(d) apply to “such other actions as the Administrator may determine.”²⁴⁶ Any subsequent standard-setting rulemaking under CAA section 231 would also be subject to the procedures under CAA section 307(d), as provided in CAA section 307(d)(1)(F) (applying the provisions of CAA section 307(d) to the promulgation or revision of any aircraft emission standard under CAA section 231). Thus, these final findings are subject to the same procedural requirements that would apply if the final findings were part of a standard-setting rulemaking.

B. Considerations for the Endangerment and Cause or Contribute Analyses Under Section 231(a)(2)(A)

In the context of this final action, the EPA understands section 231(a)(2)(A) of the CAA to call for the Administrator to exercise his judgment and make two separate determinations: first, whether the relevant kind of air pollution (here, lead air pollution) may reasonably be anticipated to endanger public health or welfare, and second, whether emissions of any air pollutant from classes of the sources in question (here, any aircraft engine that is capable of using leaded aviation gasoline), cause or contribute to this air pollution.²⁴⁷

This analysis entails a scientific judgment by the Administrator about the potential risks posed by lead emissions to public health and welfare. In this final action, the EPA used the same approach in making scientific judgments regarding endangerment as it has previously described in the 2016

²³⁸ Regarding “welfare,” the CAA states that “[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.” CAA section 302(h). Regarding “public health,” there is no definition of “public health” in the Clean Air Act. The Supreme Court has discussed the concept of “public health” in the context of whether costs can be considered when setting NAAQS. *Whitman v. American Trucking Ass’n*, 531 U.S. 457 (2001). In *Whitman*, the Court imbued the term with its most natural meaning: “the health of the public.” *Id.* at 466.

²³⁹ See *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007) (interpreting an analogous provision in CAA section 202).

²⁴⁰ See 81 FR 54435 (Aug. 15, 2016).

²⁴¹ *CRR*, 684 F.3d at 122 (internal citations omitted) (June 26, 2012).

²⁴² *CRR*, 684 F.3d at 122 (internal citations omitted) (June 26, 2012).

²⁴³ 81 FR 54425 (Aug. 15, 2016).

²⁴⁴ See, e.g., Rulemaking for non-road compression-ignition engines under section

213(a)(4) of the CAA, Proposed Rule at 58 FR 28809, 28813–14 (May 17, 1993), Final Rule at 59 FR 31306, 31318 (June 17, 1994); Rulemaking for highway heavy-duty diesel engines and diesel sulfur fuel under sections 202(a) and 211(c) of the CAA, Proposed Rule at 65 FR 35430 (June 2, 2000), and Final Rule at 66 FR 5002 (Jan. 18, 2001).

²⁴⁵ 87 FR 62773–62774 (Oct. 17, 2022).

²⁴⁶ As the Administrator is applying the provisions of CAA section 307(d) to this action under section 307(d)(1)(V), we need not determine whether those provisions would apply to this action under section 307(d)(1)(F).

²⁴⁷ See *CRR*, 684 F.3d at 117 (explaining two-part analysis under section 202(a)) (June 26, 2012).

Findings, and its analysis was guided by the same five principles that guided the Administrator's analysis in those Findings.²⁴⁸

Similarly, the EPA took the same approach to the cause or contribute analysis as was previously explained in the 2016 Findings.²⁴⁹ For example, as previously noted, section 231(a)(2)(A)'s instruction to consider whether emissions of an air pollutant cause or contribute to air pollution makes clear that the Administrator need not find that emissions from any one sector or class of sources are the sole or even the major part of an air pollution problem.²⁵⁰ Moreover, like the language in CAA section 202(a) that governed the 2009 Findings, the statutory language in section 231(a)(2)(A) does not contain a modifier on its use of the term "contribute."²⁵¹ Unlike other CAA provisions, it does not require "significant" contribution. Compare, e.g., CAA sections 111(b); 213(a)(2), (4). Congress made it clear that the Administrator is to exercise his judgment in determining contribution, and authorized regulatory controls to address air pollution even if the air pollution problem results from a wide variety of sources.²⁵² While the endangerment test looks at the air pollution being considered as a whole and the risks it poses, the cause or contribute test is designed to authorize the EPA to identify and then address what may well be many different sectors, classes, or groups of sources that are each part of the problem.²⁵³

Moreover, as the EPA has previously explained, the Administrator has ample discretion in exercising his reasonable judgment and determining whether, under the circumstances presented, the cause or contribute criterion has been met.²⁵⁴ As noted in the 2016 Findings, in addressing provisions in section 202(a), the D.C. Circuit has explained that the Act at the endangerment finding step did not require the EPA to identify a precise numerical value or "a minimum threshold of risk or harm before determining whether an air pollutant endangers."²⁵⁵ Accordingly, the EPA "may base an endangerment finding on 'a lesser risk of greater harm . . . or a greater risk of lesser harm' or any combination in between."²⁵⁶ As the

language in section 231(a)(2)(A) is analogous to that in section 202(a), it is reasonable to apply this interpretation to the endangerment determination under section 231(a)(2)(A).²⁵⁷ Moreover, the logic underlying this interpretation supports the general principle that under CAA section 231 the EPA is not required to identify a specific minimum threshold of contribution from potentially subject source categories in determining whether their emissions "cause or contribute" to the endangering air pollution.²⁵⁸ The reasonableness of this principle is further supported by the fact that section 231 does not impose on the EPA a requirement to find that such contribution is "significant," let alone the sole or major cause of the endangering air pollution.²⁵⁹

Finally, as also described in the 2016 Findings, there are a number of possible ways of assessing whether air pollutants cause or contribute to the air pollution which may reasonably be anticipated to endanger public health and welfare, and no single approach is required or has been used exclusively in previous cause or contribute determinations under title II of the CAA.²⁶⁰

C. Regulatory Authority for Emission Standards

Though the EPA is not proposing standards in this final action, in issuing these final findings, the EPA becomes subject to a duty under CAA section 231 regarding emission standards applicable to emissions of lead from aircraft engines. As noted in section III.A. of this document, section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to propose and promulgate emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in his or her judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare.

CAA section 231(a)(2)(B) further directs the EPA to consult with the Administrator of the FAA on such standards, and it prohibits the EPA from changing aircraft emission standards if such a change would significantly increase noise and adversely affect safety. CAA section 231(a)(3) provides that after we provide an opportunity for a public hearing on standards, the Administrator shall issue standards "with such modifications as he deems appropriate." In addition, under CAA

section 231(b), the effective date of any standards shall provide the necessary time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance, as determined by the EPA in consultation with the U.S. Department of Transportation (DOT).

Once the EPA adopts standards, CAA section 232 then directs the Secretary of DOT to prescribe regulations to ensure compliance with the EPA's standards. Finally, section 233 of the CAA vests the authority to promulgate emission standards for aircraft or aircraft engines only in the Federal Government. States are preempted from adopting or enforcing any standard respecting aircraft or aircraft engine emissions unless such standard is identical to the EPA's standards.²⁶¹

D. Response to Certain Comments on the Legal Framework for This Action

In commenting on the legal framework for this action, some commenters assert that the EPA does have authority under CAA section 231(a)(2)(A) to both find that lead air pollution may reasonably be anticipated to endanger the public health and welfare and to find that engine emissions of lead from certain aircraft cause or contribute to the lead air pollution that may reasonably be anticipated to endanger the public health and welfare. We agree with these comments.

Other commenters assert that the EPA does not have the legal authority to proceed with this proposal or regulate aviation fuel. These commenters state that Congress excluded aircraft from the CAA of 1970, that the EPA does not have authority to regulate aircraft fuel (citing a regulatory definition of "transportation fuel" in 40 CFR 80.1401) and that aircraft are not motor vehicles (citing a regulatory definition of "motor vehicles" in 40 CFR 85.1703). These commenters say that the definitions of transportation fuel and motor vehicles were not changed through 1977 or 1990 amendments to the CAA. Additionally, commenters assert that the "EPA points to findings for Green House Gases (GHGs) under section 202(a) supportive of its proposed authority," quoting that section and emphasizing the terms "new motor vehicles" and "new motor vehicle engines" which are used in it.

In response, the EPA notes that these commenters have fundamentally misunderstood the nature of this action and the legal authority upon which it relies. These final findings do not

²⁴⁸ See, e.g., 81 FR 54434–54435 (Aug. 15, 2016).

²⁴⁹ See, e.g., 81 FR 54437–54438 (Aug. 15, 2016).

²⁵⁰ See, e.g., 81 FR 54437–54438 (Aug. 15, 2016).

²⁵¹ See, e.g., 81 FR 54437–54438 (Aug. 15, 2016).

²⁵² See 81 FR 54437–54438 (Aug. 15, 2016).

²⁵³ See 81 FR 54437–54438 (Aug. 15, 2016).

²⁵⁴ See 81 FR 54437–54438 (Aug. 15, 2016).

²⁵⁵ CRR, 684 F.3d at 122–123 (June 26, 2012).

²⁵⁶ CRR, 684 F.3d at 122–123. (quoting Ethyl Corp., 541 F.2d at 18) (June 26, 2012).

²⁵⁷ 81 FR 54438 (Aug. 15, 2016).

²⁵⁸ 81 FR 54438 (Aug. 15, 2016).

²⁵⁹ 81 FR 54438 (Aug. 15, 2016).

²⁶⁰ See 81 FR 54462 (Aug. 15, 2016).

²⁶¹ CAA section 233.

establish regulatory standards for leaded avgas, nor are they related in any way to the regulatory definitions of transportation fuels in 40 CFR 80.1401 or of motor vehicles in 40 CFR 85.1703, which implement EPA programs under Part A of Title II of the CAA and do not apply to aircraft that are governed by Part B of Title II. EPA's regulatory provisions implementing Title II Part B and related to air pollution from aircraft are found in 40 CFR parts 87, 1030, and 1031. The EPA's authority for this action is not based on its authority to regulate fuels under CAA section 211 or its authority to regulate motor vehicles or motor vehicle engines under CAA section 202(a). Rather, the EPA's authority for this action comes from CAA section 231(a)(2). Further, this action is focused on the threshold endangerment and cause or contribute criteria, which are being undertaken in proceedings that are separate and distinct from any follow-on regulatory action; no regulatory provisions were proposed and none are being finalized in this action.

In response to the claims that aircraft are excluded from the CAA and that the EPA does not have authority to conduct this endangerment and cause or contribute finding, we disagree. As described in the proposal, the EPA is acting under the express authority prescribed by Congress in section 231(a)(2)(A) of the CAA, which, as amended, provides that the Administrator "shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare." The D.C. Circuit recognized EPA's authority to promulgate emission standards applicable to air pollutants from aircraft engines under CAA section 231 in *National Association of Clean Air Agencies v. EPA*, 489 F.3d 1221 (D.C. Cir. 2007) ("NACAA"). Similarly, in the 1970 amendments to the CAA, section 231(a)(2) provided that the Administrator "shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare." Public Law 91–604. Thus, the statement in the comment that the 1970 CAA excluded aircraft is incorrect.²⁶²

Further, the EPA has previously made endangerment and cause or contribute findings related to emissions from aircraft engines under section 231 of the CAA.

As explained in the proposal, and in section III. above, in this action the Administrator is using the same approach of applying a two-part test under section 231(a)(2)(A) as described in the finalized endangerment and cause or contribute findings under CAA section 231 for greenhouse gases (GHGs) emissions from aircraft in 2016.²⁶³ We further explained that this approach is the same approach that the EPA used in making endangerment and cause and contribute findings for GHGs under section 202(a) of the CAA in 2009 (2009 Findings), which is reasonable in light of the parallels of the language and structure between sections 231(a)(2)(A) and 202(a)(1) of the CAA.²⁶⁴ Some comments misconstrued EPA's discussion of section 202(a) in the proposal to infer that EPA was relying on its authority under section 202(a) in this action. That is not the case. While using the same approach as in the 2009 Findings, the EPA is not acting under the authority of section 202(a) in making these final findings, but rather, is relying on the authority under section 231(a)(2)(A) as described herein, which expressly authorizes regulation of emissions of air pollutants from aircraft engines which the Administrator judges to cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

Additional commenters state that they are opposed to any rulemaking that could lead to the elimination of leaded avgas before a comparatively priced substitute fuel is available for widespread use. As an initial matter, the EPA notes that, as described in section III.A. of this document, in this action, the EPA is addressing the predicate to regulatory action under CAA section 231 through a two-part test. In the first step of the two-part test, the Administrator must decide whether, in his judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. As the second step, the Administrator must decide whether, in his judgment, emissions of an air pollutant from certain classes of aircraft engines cause or contribute to this air

pollution. If the Administrator answers both questions in the affirmative, as he is doing here, the EPA becomes subject to a duty to propose and promulgate standards under section 231, but the EPA is not proposing or promulgating any standards in this action. These commenters have concerns regarding the cost and availability of unleaded fuels that might be required to meet a future emission standard for lead. To reiterate, the EPA is not proposing or promulgating any standards in this action, nor is the EPA reaching any conclusions about the possible elimination of leaded avgas or the cost or availability of comparatively priced substitute fuels; those issues will be addressed, if at all, only in a future standard-setting rulemaking. As for future standards, the delegation of authority in CAA section 231 to the EPA "is both explicit and extraordinarily broad," *NACAA*, 489 F.3d at 1229, and "confer[s] broad discretion to the [EPA] Administrator to weigh various factors in arriving at appropriate standards," *id.* at 1230. However, as described in section III.C. of this document, CAA section 231(a)(2)(B) directs the EPA to consult with the Administrator of the FAA on such standards, and it prohibits the EPA from changing aircraft emission standards if such a change would significantly increase noise and adversely affect safety. Further, under CAA section 231(b), the effective date of any standards shall provide the necessary time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance, as determined by the EPA in consultation with the U.S. Department of Transportation (DOT).

IV. The Final Endangerment Finding Under CAA Section 231

In this action, the Administrator finds that lead air pollution may reasonably be anticipated to endanger the public health and welfare within the meaning of CAA section 231(a)(2)(A). This section discusses both the public health and welfare aspects of the endangerment finding and describes the scientific evidence that informs the Administrator's final determination. The vast majority of comments supported the EPA's proposal and agreed with the EPA's description of the health and welfare effects of lead air pollution. The Agency's responses to public comments on the proposed endangerment finding, including those opposing finalizing the finding, can be

Amendments of 1977, Public Law 95–95, 91 Stat. 685, 791 (1977).

²⁶³ See e.g., 81 FR 55434–54440 (Aug. 15, 2016).

²⁶⁴ 74 FR 66496, 66505–10 (Dec. 15, 2009); see also *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (*CRR*) (subsequent history omitted) (affirming EPA's approach in the 2009 Findings).

²⁶² The change to the current language in section 231(a)(2) occurred in 1977, see *Clean Air Act*

found in the Response to Comments document for this action. After consideration of the comments on this topic, the EPA concludes that the scientific evidence supports finalizing the finding as proposed.

A. Scientific Basis of the Endangerment Finding

1. Lead Air Pollution

Lead is emitted and exists in the atmosphere in a variety of forms and compounds and is emitted by a wide range of sources.²⁶⁵ Lead is persistent in the environment. Atmospheric transport distances of airborne lead vary depending on its form and particle size, as discussed in section II.A. of this document, with coarse lead-bearing particles deposited to a greater extent near the source, while fine lead-bearing particles can be transported long distances before being deposited. Through atmospheric deposition, lead is distributed to other environmental media, including soils and surface water bodies.²⁶⁶ Lead is retained in soils and sediments, where it provides a historical record and, depending on several factors, can remain available in some areas for extended periods for environmental or human exposure, with any associated potential public health and public welfare impacts.

For purposes of this action, the EPA defines the “air pollution” referred to in section 231(a)(2)(A) of the CAA as lead, which we also refer to as lead air pollution in this document.²⁶⁷

2. Health Effects and Lead Air Pollution

In 2013, the EPA completed the Integrated Science Assessment for Lead which built on the findings of previous AQCDs for Lead. These documents critically assess and integrate relevant scientific information regarding the health and welfare effects of lead and have undergone extensive critical review by the EPA, the Clean Air Scientific Advisory Committee

(CASAC), and the public. As such, these assessments provide the primary scientific and technical basis for the Administrator’s finding that lead air pollution is reasonably anticipated to endanger public health and welfare.^{268 269}

As summarized in section II.A. of this document, human exposure to lead that is emitted into the air can occur by multiple pathways. Inhalation pathways include both ambient air outdoors and ambient air that has infiltrated into indoor environments. Additional exposure pathways may involve media other than air, including indoor and outdoor dust, soil, surface water and sediments, vegetation and biota. The bioavailability of air-related lead is modified by several factors in the environment (*e.g.*, the chemical form of lead, environmental fate of lead emitted to air). That notwithstanding, as described in section II.A. of this document, it is well-documented that exposures to lead emitted into the air can result in increased blood lead levels, particularly for children living near air lead sources, due to their proximity to these sources of exposure.²⁷⁰

As described in the EPA’s 2013 Lead ISA and in prior AQCDs, lead has been demonstrated to exert a broad array of deleterious effects on multiple organ systems. The 2013 Lead ISA characterizes the causal nature of relationships between lead exposure and health effects using a weight-of-evidence approach.²⁷¹ We summarize here those health effects for which the EPA in the 2013 Lead ISA has concluded that the evidence supports a determination of either a “causal relationship,” “likely to be causal

relationship,” or “suggestive of a causal relationship” between lead exposure and a health effect.²⁷² In the discussion that follows, we summarize findings regarding effects observed in children, effects observed in adults, and additional effects observed that are not specific to an age group.

The EPA has concluded that there is a “causal relationship” between lead exposure during childhood (pre and postnatal) and a range of health effects in children, including the following: cognitive function decrements; the group of externalizing behaviors comprising attention, increased impulsivity, and hyperactivity; and developmental effects (*i.e.*, delayed pubertal onset).²⁷³ In addition, the EPA has concluded that the evidence supports a conclusion that there is a “likely to be causal relationship” between lead exposure and conduct disorders in children and young adults, internalizing behaviors such as depression, anxiety and withdrawn behavior, auditory function decrements, and fine and gross motor function decrements.²⁷⁴

Multiple epidemiologic studies conducted in diverse populations of children consistently demonstrate the harmful effects of lead exposure on cognitive function (as measured by decrements in intelligence quotient [IQ], decreased academic performance, and poorer performance on tests of executive function). These findings are supported by extensively documented toxicological evidence substantiating the plausibility of these findings in the epidemiological literature and provide information on the likely mechanisms underlying these neurotoxic effects.²⁷⁵

Intelligence quotient is a well-established, and among the most rigorously standardized, cognitive function measure that has been used extensively as a measure of the negative

²⁶⁵ EPA (2013) ISA for Lead. Section 2.2. “Sources of Atmospheric Pb.” p. 2–1. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁶⁶ EPA (2013) ISA for Lead. Executive Summary. “Sources, Fate and Transport of Lead in the Environment, and the Resulting Human Exposure and Dose.” pp. lxxviii–lxxix. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁶⁷ The lead air pollution can occur as elemental lead or in lead-containing compounds, and this definition of the air pollution recognizes that lead in air (whatever form it is found in, including in inorganic and organic compounds containing lead) has the potential to elicit public health and welfare effects. We note, for example, that the 2013 Lead ISA and 2008 AQCD described the toxicokinetics of inorganic and organic forms of lead and studies evaluating lead-related health effects commonly measure total lead level (*i.e.*, all forms of lead in various biomarker tissues such as blood).

²⁶⁸ EPA (2013) ISA for Lead. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁶⁹ EPA (2006) Air Quality Criteria for Lead. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

²⁷⁰ EPA (2013) ISA for Lead. Section 5.4. “Summary.” p. 5–40. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷¹ The causal framework draws upon the assessment and integration of evidence from across scientific disciplines, spanning atmospheric chemistry, exposure, dosimetry and health effects studies (*i.e.*, epidemiologic, controlled human exposure, and animal toxicological studies), and assessment of the related uncertainties and limitations that ultimately influence our understanding of the evidence. This framework employs a five-level hierarchy that classifies the overall weight of evidence with respect to the causal nature of relationships between criteria pollutant exposures and health and welfare effects using the following categorizations: causal relationship; likely to be causal relationship; suggestive of, but not sufficient to infer, a causal relationship; inadequate to infer the presence or absence of a causal relationship; and not likely to be a causal relationship. EPA (2013) ISA for Lead. Preamble section. p. xlv. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷² EPA (2013) ISA for Lead. Table ES–1. “Summary of causal determinations for the relationship between exposure to Pb and health effects.” pp. lxxxiii–lxxxvii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷³ EPA (2013) ISA for Lead. Table ES–1. “Summary of causal determinations for the relationship between exposure to Pb and health effects.” p. lxxxiii and p. lxxxvi. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷⁴ EPA (2013) ISA for Lead. Table ES–1. “Summary of causal determinations for the relationship between exposure to Pb and health effects.” pp. lxxxiii–lxxxiv. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷⁵ EPA (2013) ISA for Lead. Executive Summary. “Effects of Pb Exposure in Children.” pp. lxxxvii–lxxxviii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

effects of exposure to lead.^{276 277} Examples of other measures of cognitive function negatively associated with lead exposure include measures of intelligence and cognitive development and cognitive abilities, such as learning, memory, and executive functions, as well as academic performance and achievement.²⁷⁸

In summarizing the evidence relating neurocognitive effects to lead exposure metrics, the 2013 Lead ISA notes that “in individual studies, postnatal (early childhood and concurrent) blood [lead] levels are also consistently associated with cognitive function decrements in children and adolescents.”^{279 280} The 2013 Lead ISA additionally notes that the findings from experimental animal studies indicate that lead exposures during multiple early lifestages and periods are observed to induce impairments in learning, and that these findings “are consistent with the understanding that the nervous system continues to develop (*i.e.*, synaptogenesis and synaptic pruning remains active) throughout childhood and into adolescence.”²⁸¹ The 2013 Lead ISA further notes that “it is clear that [lead] exposure in childhood presents a risk; further, there is no evidence of a threshold below which there are no harmful effects on cognition from [lead] exposure,” and additionally recognizes uncertainty about the patterns of [lead] exposure that contribute to the blood [lead] levels analyzed in epidemiologic studies (uncertainties which are greater in studies of older children and adults than in studies of younger children who do not have lengthy exposure histories).²⁸² Evidence suggests that while some neurocognitive effects of lead in children may be transient, some lead-related cognitive effects may be irreversible and persist into

adulthood,²⁸³ potentially affecting lower educational attainment and financial well-being.²⁸⁴

The 2013 Lead ISA concluded that neurodevelopmental effects in children were among the effects best substantiated as occurring at the lowest blood lead levels, and that these categories of effects were clearly of the greatest concern with regard to potential public health impact.²⁸⁵ For example, in considering population risk, the 2013 Lead ISA notes that “[s]mall shifts in the population mean IQ can be highly significant from a public health perspective.”²⁸⁶ Specifically, if lead-related decrements are manifested uniformly across the range of IQ scores in a population, “a small shift in the population mean IQ may be significant from a public health perspective because such a shift could yield a larger proportion of individuals functioning in the low range of the IQ distribution, which is associated with increased risk of educational, vocational, and social failure” as well as a decrease in the proportion with high IQ scores.²⁸⁷

With regard to lead effects identified for the adult population, the 2013 Lead ISA concluded that there is a “causal relationship” between lead exposure and hypertension and coronary heart disease in adults. The 2013 Lead ISA concluded that cardiovascular effects in adults were those of greatest public health concern for adults because the evidence indicated that these effects occurred at the lowest blood lead levels, compared to other health effects, although it further noted that the role of past versus recent exposures to lead is unclear.²⁸⁸

With regard to evidence of cardiovascular effects and other effects of lead on adults, the 2013 Lead ISA notes that “[a] large body of evidence from both epidemiologic studies of adults and experimental studies in animals demonstrates the effect of long-

term [lead] exposure on increased blood pressure and hypertension.”²⁸⁹ In addition to its effect on blood pressure, “[lead] exposure can also lead to coronary heart disease and death from cardiovascular causes and is associated with cognitive function decrements, symptoms of depression and anxiety, and immune effects in adult humans.”²⁹⁰ The extent to which the effects of lead on the cardiovascular system are reversible is not well characterized. Additionally, the frequency, timing, level, and duration of lead exposure causing the effects observed in adults has not been pinpointed, and higher exposures earlier in life may play a role in the development of health effects measured later in life.²⁹¹ The 2013 Lead ISA states that “[i]t is clear however, that [lead] exposure can result in harm to the cardiovascular system that is evident in adulthood and may also affect a broad array of organ systems.”²⁹² In summarizing the public health significance of lead on the adult population, the 2013 Lead ISA notes that “small [lead]-associated increases in the population mean blood pressure could result in an increase in the proportion of the population with hypertension that is significant from a public health perspective.”²⁹³

In addition to the effects summarized here, the EPA has concluded there is a “likely to be causal relationship” between lead exposure and both cognitive function decrements and psychopathological effects in adults. The 2013 Lead ISA also concludes that there is a “causal relationship” between lead exposure and decreased red blood cell survival and function, altered heme synthesis, and male reproductive function. The EPA has also concluded there is a “likely to be causal relationship” between lead exposure and decreased host resistance, resulting in increased susceptibility to bacterial infection and suppressed delayed type hypersensitivity, and cancer.²⁹⁴

²⁷⁶ EPA (2013) ISA for Lead. Section 4.3.2. “Cognitive Function.” p. 4–59. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷⁷ EPA (2006) Air Quality Criteria for Lead. Sections 6.2.2 and 8.4.2. EPA, Washington, DC, EPA/600/R–5/144aF, 2006.

²⁷⁸ EPA (2013) ISA for Lead. Section 4.3.2. “Cognitive Function.” p. 4–59. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁷⁹ In this statement, the term “concurrent” is referring to blood lead measurements that were taken concurrently with the neurocognitive testing.

²⁸⁰ EPA (2013) ISA for Lead. Section 1.9.4. “Pb Exposure and Neurodevelopmental Deficits in Children.” p. 1–76. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸¹ EPA (2013) ISA for Lead. Section 1.9.4. “Pb Exposure and Neurodevelopmental Deficits in Children.” p. 1–76. EPA/600/R–10/075F, 2013.

²⁸² EPA (2013) ISA for Lead. Executive Summary. “Effects of Pb Exposure in Children.” pp. lxxxvii–lxxxviii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸³ EPA (2013) ISA for Lead. Section 1.9.5.

“Reversibility and Persistence of Neurotoxic Effects of Pb.” p. 1–76. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸⁴ EPA (2013) ISA for Lead. Section 4.3.14.

“Public Health Significance of Associations between Pb Biomarkers and Neurodevelopmental Effects.” p. 4–279. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸⁵ EPA (2013) ISA for Lead. Section 1.9.1.

“Public Health Significance.” p. 1–68. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸⁶ EPA (2013) ISA for Lead. Executive Summary. “Public Health Significance.” p. xciii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸⁷ EPA (2013) ISA for Lead. Section 1.9.1.

“Public Health Significance.” p. 1–68. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸⁸ EPA (2013) ISA for Lead. Section 1.9.1.

“Public Health Significance.” p. 1–68. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁸⁹ EPA (2013) ISA for Lead. Executive Summary. “Effects of Pb Exposure in Adults.” p. lxxxviii. EPA/600/R–10/075F, 2013.

²⁹⁰ EPA (2013) ISA for Lead. Executive Summary. “Effects of Pb Exposure in Adults.” p. lxxxviii. EPA/600/R–10/075F, 2013.

²⁹¹ EPA (2013) ISA for Lead. Executive Summary. “Effects of Pb Exposure in Adults.” p. lxxxviii. EPA/600/R–10/075F, 2013.

²⁹² EPA (2013) ISA for Lead. Executive Summary. “Effects of Pb Exposure in Adults.” p. lxxxviii. EPA/600/R–10/075F, 2013.

²⁹³ EPA (2013) ISA for Lead. Executive Summary. “Public Health Significance.” p. xciii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁹⁴ EPA (2013) ISA for Lead. Table ES–1. “Summary of causal determinations for the relationship between exposure to Pb and health

Additionally, in 2013 EPA concluded that the evidence is “suggestive of a causal relationship” between lead exposure and some additional effects. These include auditory function decrements in adults and subclinical atherosclerosis, reduced kidney function, birth outcomes (e.g., low birth weight, spontaneous abortion), and female reproductive function.²⁹⁵

The EPA has identified factors that may increase the risk of health effects of lead exposure due to susceptibility and/or vulnerability; these are termed “at-risk” factors. The 2013 Lead ISA describes the systematic approach the EPA uses to evaluate the coherence of evidence to determine the biological plausibility of associations between at-risk factors and increased vulnerability and/or susceptibility. An overall weight of evidence is used to determine whether a specific factor results in a population being at increased risk of lead-related health effects.²⁹⁶ The 2013 Lead ISA concludes that “there is adequate evidence that several factors—childhood, race/ethnicity, nutrition, residential factors, and proximity to [lead] sources—confer increased risk of lead-related health effects.”²⁹⁷

3. Welfare Effects and Lead Air Pollution

The 2013 Lead ISA characterizes the causal nature of relationships between lead exposure and welfare effects using a five-level hierarchy that classifies the overall weight of evidence.²⁹⁸ We summarize here the welfare effects for which the EPA has concluded that the evidence supports a determination of either a “causal relationship,” or a “likely to be causal relationship,” with exposure to lead, or that the evidence is “suggestive of a causal relationship” with lead exposure. The discussion that

follows is organized to first provide a summary of the effects of lead in the terrestrial environment, followed by a summary of effects of lead in freshwater and saltwater ecosystems. The 2013 Lead ISA further describes the scales or levels at which these determinations between lead exposure and effects on plants, invertebrates, and vertebrates were made (i.e., community-level, ecosystem-level, population-level, organism-level or sub-organism level).²⁹⁹

In terrestrial environments, the EPA determined that “causal relationships” exist between lead exposure and reproductive and developmental effects in vertebrates and invertebrates, growth in plants, survival for invertebrates, hematological effects in vertebrates, and physiological stress in plants.³⁰⁰ The EPA also determined that there were “likely to be causal relationships” between lead exposure and community and ecosystem effects, growth in invertebrates, survival in vertebrates, neurobehavioral effects in invertebrates and vertebrates, and physiological stress in invertebrates and vertebrates.

In freshwater environments, the EPA found that “causal relationships” exist between lead exposure and reproductive and developmental effects in vertebrates and invertebrates, growth in invertebrates, survival for vertebrates and invertebrates, and hematological effects in vertebrates. The EPA also determined that there were “likely to be causal relationships” between lead exposure and community and ecosystem effects, growth in plants, neurobehavioral effects in invertebrates and vertebrates, hematological effects in invertebrates, and physiological stress in plants, invertebrates, and vertebrates.³⁰¹

The EPA also determined that the evidence for saltwater ecosystems was “suggestive of a causal relationship” between lead exposure and reproductive and developmental effects in invertebrates, hematological effects in vertebrates, and physiological stress in invertebrates.³⁰²

²⁹⁹ EPA (2013) ISA for Lead. Table ES–2.

“Schematic representation of the relationships between the various MOAs by which Pb exerts its effects.” p. lxxxii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³⁰⁰ EPA (2013) ISA for Lead. Table ES–2.

“Summary of causal determinations for the relationship between Pb exposure and effects on plants, invertebrates, and vertebrates.” p. xc. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³⁰¹ EPA (2013) ISA for Lead. Table ES–2.

“Summary of causal determinations for the relationship between Pb exposure and effects on plants, invertebrates, and vertebrates.” p. xc. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³⁰² EPA (2013) ISA for Lead. Table ES–2. “Summary of causal determinations for the

The 2013 Lead ISA concludes, “With regard to the ecological effects of [lead], uptake of [lead] into fauna and subsequent effects on reproduction, growth and survival are established and are further supported by more recent evidence. These may lead to effects at the population, community, and ecosystem level of biological organization. In both terrestrial and aquatic organisms, gradients in response are observed with increasing concentration of [lead] and some studies report effects within the range of [lead] detected in environmental media over the past several decades. Specifically, effects on reproduction, growth, and survival in sensitive freshwater invertebrates are well-characterized from controlled studies at concentrations at or near [lead] concentrations occasionally encountered in U.S. fresh surface waters. Hematological and stress related responses in some terrestrial and aquatic species were also associated with elevated [lead] levels in polluted areas. However, in natural environments, modifying factors affect [lead] bioavailability and toxicity and there are considerable uncertainties associated with generalizing effects observed in controlled studies to effects at higher levels of biological organization. Furthermore, available studies on community and ecosystem-level effects are usually from contaminated areas where [lead] concentrations are much higher than typically encountered in the environment. The contribution of atmospheric [lead] to specific sites is not clear and the connection between air concentration of [lead] and ecosystem exposure continues to be poorly characterized.”³⁰³

B. Final Endangerment Finding

The Administrator finds, for purposes of CAA section 231(a)(2)(A), that lead air pollution may reasonably be anticipated to endanger the public health and welfare. This finding is based on consideration of the extensive scientific evidence, described in this section, that has been amassed over decades and rigorously peer reviewed by CASAC, as well as consideration of public comments on the proposal.

V. The Final Cause or Contribute Finding Under CAA Section 231

In this action, the Administrator finds that engine emissions of lead from

relationship between Pb exposure and effects on plants, invertebrates, and vertebrates.” p. xc. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

³⁰³ EPA (2013) ISA for Lead. “Summary.” p. xcvi. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

effects.” pp. lxxxiv–lxxxvii. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁹⁵ EPA (2013) ISA for Lead. Table ES–1. “Summary of causal determinations for the relationship between exposure to Pb and health effects.” pp. lxxxiv–lxxxvi. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁹⁶ EPA (2013) ISA for Lead. Chapter 5. “Approach to Classifying Potential At-Risk Factors.” p. 5–2. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁹⁷ EPA (2013) ISA for Lead. Section 5.4. “Summary.” p. 5–44. EPA, Washington, DC, EPA/600/R–10/075F, 2013.

²⁹⁸ Causal determinations for ecological effects were based on integration of information on biogeochemistry, bioavailability, biological effects, and exposure-response relationships of lead in terrestrial, freshwater, and saltwater environments. This framework employs a five-level hierarchy that classifies the overall weight of evidence with respect to the causal nature of relationships between criteria pollutant exposures and health and welfare effects using the categorizations described in the 2013 Lead NAAQS.

certain aircraft cause or contribute to the lead air pollution that may reasonably be anticipated to endanger public health and welfare under section 231(a)(2)(A) of the Clean Air Act. This section describes the definition of the air pollutant and the data and information supporting the Administrator's final determination. Public comments on the cause or contribute finding were largely supportive of the EPA's proposal, though some commenters opposed finalizing the finding. After consideration of the comments on this topic, the EPA concludes that the scientific evidence supports finalizing the finding as proposed. The Agency's responses to certain public comments on the cause or contribute finding can be found in section V.C. of this document, and responses to additional comments on the cause or contribute finding can be found in the Response to Comments document for this action.

A. Definition of the Air Pollutant

Under section 231, the Administrator is to determine whether emissions of any air pollutant from any class or classes of aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. As in the 2016 Findings that the EPA made under section 231 for greenhouse gases, in making this cause or contribute finding under section 231(a)(2), the Administrator first defines the air pollutant being evaluated. The Administrator has reasonably and logically considered the relationship between the lead air pollution and the air pollutant when considering emissions of lead from engines used in covered aircraft. The Administrator defines the air pollutant to match the definition of the air pollution, such that the air pollutant analyzed for contribution mirrors the air pollution considered in the endangerment finding. Accordingly, for purposes of this action, the Administrator defines the "air pollutant" referred to in section 231(a)(2)(A) as lead, which we also refer to as the lead air pollutant in this document.³⁰⁴ As noted in section II.A.2. of this document, lead emitted to the air from covered aircraft engines is predominantly in particulate form as lead dibromide; however, some chemical compounds of lead that are expected in the exhaust from these engines, including alkyl lead

compounds, would occur in the air in gaseous form.

B. The Data and Information Used To Evaluate the Final Cause or Contribute Finding

The Administrator's assessment of whether emissions from the engines used in covered aircraft cause or contribute to lead air pollution was informed by estimates of lead emissions from the covered aircraft, lead concentrations in air at and near airports that are attributable to lead emissions from piston engines used in covered aircraft, and projected future conditions.

As used in this final action, the term "covered aircraft" refers to all aircraft and ultralight vehicles equipped with covered engines which, in this context, means any aircraft engine that is capable of using leaded avgas. Examples of covered aircraft would include smaller piston-powered aircraft such as the Cessna 172 (single-engine aircraft) and the Beechcraft Baron G58 (twin-engine aircraft), as well as the largest piston-engine aircraft such as the Curtiss C-46 and the Douglas DC-6. Other examples of covered aircraft would include rotorcraft, such as the Robinson R44 helicopter, light-sport aircraft, and ultralight vehicles equipped with piston engines. The vast majority of covered aircraft are piston-engine powered.

In recent years, covered aircraft are estimated to be the largest single source of lead to air in the U.S. Since 2008, as described in section II.A.2.b. of this document, lead emissions from covered aircraft are estimated to have contributed over 50 percent of all lead emitted to the air nationally. The EPA estimates 470 tons of lead were emitted by covered aircraft in 2017, comprising 70 percent of lead emitted to air nationally that year.^{305 306} In approximately 1,000 counties in the U.S., the EPA's emissions inventory identifies covered aircraft as the sole source of lead emissions. Among the 1,872 counties in the U.S. for which the inventory identifies multiple sources of

lead emissions, including engine emissions from covered aircraft, the contribution of aircraft engine emissions ranges from 0.00005 to 4.3 tons per year, comprising 0.15 to 98 percent (respectively) of total lead emissions to air in those counties.³⁰⁷

Covered aircraft activity, as measured by the number of hours flown nationwide, increased nine percent in the period from 2012 through 2019.³⁰⁸ General aviation activity, largely conducted by covered aircraft, increased up to 52 percent at airports that are among the busiest in the U.S.³⁰⁹ In future years, while piston-engine aircraft activity overall is projected to decrease slightly, this change in activity is not projected to occur uniformly across airports in the U.S.; some airports are forecast to have increased activity by general aviation aircraft, the majority of which is conducted by piston-engine aircraft.³¹⁰ Although there is some uncertainty in these projections, they indicate that lead emissions from covered aircraft may increase at some airports in the future.³¹¹

Additionally, engine emissions of lead from covered aircraft may deposit in the local environment and, due to the small size of the lead-bearing particles emitted by engines in covered aircraft, these particles may disperse widely in

³⁰⁷ Airport lead annual emissions data used were reported in the 2017 NEI. Available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>. In addition to the triennial NEI, the EPA collects from state, local, and Tribal air agencies point source data for larger sources every year (see <https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr> for specific emissions thresholds). While these data are not typically published as a new NEI, they are available publicly upon request and are also included in <https://www.epa.gov/air-emissions-modeling/emissions-modeling-platforms>, which are created for years other than the triennial NEI years. County estimates of lead emissions from non-aircraft sources used in this action are from the 2019 inventory. There are 3,012 counties and statistical equivalent areas where EPA estimates engine emissions of lead occur.

³⁰⁸ FAA. General Aviation and Part 135 Activity Surveys—CY 2019. Chapter 3: Primary and Actual Use. Table 1.3—General Aviation and Part 135 Total Hours Flown by Aircraft Type 2008–2019 (Hours in Thousands). Retrieved on Dec., 27, 2021 at https://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2019/.

³⁰⁹ Geidosch. Memorandum to Docket EPA-HQ-OAR-2022-0389. Past Trends and Future Projections in General Aviation Activity and Emissions. June 1, 2022. Docket ID EPA-HQ-2022-0389.

³¹⁰ Geidosch. Memorandum to Docket EPA-HQ-OAR-2022-0389. Past Trends and Future Projections in General Aviation Activity and Emissions. June 1, 2022. Docket ID EPA-HQ-2022-0389.

³¹¹ FAA TAF Fiscal Years 2020–2045 describes the forecast method, data sources, and review process for the TAF estimates. The documentation for the TAF is available at <https://taf.faa.gov/Downloads/TAFSummaryFY2020-2045.pdf>.

³⁰⁴ The lead air pollutant can occur as elemental lead or in lead-containing compounds, and this definition of the air pollutant recognizes the range of chemical forms of lead emitted by engines in covered aircraft.

³⁰⁵ The lead inventories for 2008, 2011 and 2014 are provided in the EPA (2018b) Report on the Environment Exhibit 2. Anthropogenic lead emissions in the U.S. Available at <https://cfpub.epa.gov/roe/indicator.cfm?i=13#2>. The lead inventories for 2017 are available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data#dataq>.

³⁰⁶ As described in section II.A.2., the EPA estimates 427 tons of lead were emitted by aircraft engines operating on leaded fuel in 2020. Due to the Covid-19 pandemic, a substantial decrease in activity by aircraft occurred in 2020, impacting the total lead emissions for this year. The 2020 NEI is available at: <https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-data>.

the environment. Therefore, because lead is a persistent pollutant in the environment, we anticipate current and future emissions of lead from covered aircraft engines may contribute to exposures and uptake by humans and biota into the future.

In evaluating the contributions of engine emissions from covered aircraft to the lead air pollution, as defined in section IV.A. of this document, the EPA also considered three types of information about lead concentrations in the ambient air: monitored concentrations, modeled concentrations, and model-extrapolated estimates of lead concentrations. Lead concentrations monitored in the ambient air typically quantify lead compounds collected as suspended particulate matter. The information gained from air monitoring and air quality modeling provides insight into how lead emissions from piston engines used in covered aircraft can affect lead concentrations in air.

As described in section II.A.3. of this document, the EPA has conducted air quality modeling at two airports and extrapolated modeled estimates of lead concentrations to 13,000 airports with piston-engine aircraft activity. These studies indicate that over a three-month averaging time (the averaging time for the Lead NAAQS), the engine emissions of lead from covered aircraft are estimated to contribute to air lead concentrations to a distance of at least 500 meters downwind from a runway.^{312 313} Additional studies have reported that lead emissions from covered aircraft may have increased concentrations of lead in air by one to two orders of magnitude at locations proximate to aircraft emissions compared to nearby locations not impacted by a source of lead air emissions.^{314 315 316}

³¹² Carr et al., 2011. Development and evaluation of an air quality modeling approach to assess near-field impacts of lead emissions from piston-engine aircraft operating on leaded aviation gasoline. *Atmospheric Environment*, 45 (32), 5795–5804. DOI: <https://dx.doi.org/10.1016/j.atmosenv.2011.07.017>.

³¹³ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. Table 6. EPA-420-R-20-003, 2020. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>.

³¹⁴ Carr et al., 2011. Development and evaluation of an air quality modeling approach to assess near-field impacts of lead emissions from piston-engine aircraft operating on leaded aviation gasoline. *Atmospheric Environment*, 45 (32), 5795–5804. DOI: <https://dx.doi.org/10.1016/j.atmosenv.2011.07.017>.

³¹⁵ Heiken et al., 2014. Quantifying Aircraft Lead Emissions at Airports. ACRP Report 133. Available at <https://www.nap.edu/catalog/22142/quantifying-aircraft-lead-emissions-at-airports>.

In 2008 and 2010, the EPA enhanced the lead monitoring network by requiring monitors to be placed in areas with sources such as industrial facilities and airports, as described further in section II.A.3. of this document.^{317 318} As part of this 2010 requirement to expand lead monitoring nationally, the EPA required a 1-year monitoring study of 15 additional airports with estimated lead emissions between 0.50 and 1.0 ton per year in an effort to better understand how these emissions affect concentrations of lead in the air at and near airports. Further, to help evaluate airport characteristics that could lead to ambient lead concentrations that approach or exceed the lead NAAQS, airports for this 1-year monitoring study were selected based on factors such as the level of activity of covered aircraft and the predominant use of one runway due to wind patterns. Monitored lead concentrations in ambient air are highly sensitive to monitor location relative to the location of the run-up areas for piston-engine aircraft and other localized areas of elevated lead concentrations relative to the air monitor locations.

The lead monitoring study at airports began in 2011. In 2012, air monitors were placed in close proximity to the run-up areas at the San Carlos Airport (measurements started on March 10, 2012) and the McClellan-Palomar Airport (measurements started on March 16, 2012). The concentrations of lead measured at both of these airports in 2012 were above the level of the lead NAAQS, with the highest measured levels of lead in total suspended particles over a rolling three-month average of 0.33 micrograms per cubic meter of air at the San Carlos Airport and 0.17 micrograms per cubic meter of air at the McClellan-Palomar Airport. These concentrations violate the primary and secondary lead NAAQS, which are set at a level of 0.15 micrograms per cubic meter of air measured in total suspended particles, as an average of three consecutive monthly concentrations.

In recognition of the potential for lead concentrations to exceed the lead NAAQS in ambient air near the area of maximum concentration at airports, the EPA further conducted an assessment of airports nationwide, titled “Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports” and

³¹⁶ Hudda et al., 2022. Substantial Near-Field Air Quality Improvements at a General Aviation Airport Following a Runway Shortening. *Environmental Science & Technology*. DOI: 10.1021/acs.est.1c06765.

³¹⁷ 73 FR 66965 (Nov. 12, 2008).

³¹⁸ 75 FR 81126 (Dec. 27, 2010).

described in section II.A.3. of this document.³¹⁹ The model-extrapolated lead concentrations estimated in this study are attributable solely to emissions from engines in covered aircraft operating at the airports evaluated and did not include other sources of lead emissions to air. The EPA identified four airports with the potential for lead concentrations above the lead NAAQS due to lead emissions from engines used in covered aircraft.

Additional information regarding the contribution of engine emissions of lead from covered aircraft to lead air pollution is provided by the EPA’s Air Toxics Screening Assessment. As described and summarized in section II.A.3. of this document, the EPA’s Air Toxics Screening Assessment estimates that piston engines used in aircraft contribute more than 50 percent of the estimated lead concentrations in over half of the census tracts in the U.S.³²⁰

The EPA also notes that lead is emitted from engines in covered aircraft in three of the ten areas in the U.S. currently designated as nonattainment for the 2008 lead NAAQS. These areas are Arecibo, PR, and Hayden, AZ, each of which include one airport servicing covered aircraft, and the Los Angeles County-South Coast Air Basin, CA, which contains at least 22 airports within its nonattainment area boundary.^{321 322} Although the lead emissions from aircraft are not the predominant source of airborne lead in these areas, the emissions from covered aircraft may increase ambient air lead concentrations in these areas.

³¹⁹ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports Table 6. EPA-420-R-20-003, 2020. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>.

³²⁰ EPA’s 2019 AirToxScreen is available at <https://www.epa.gov/AirToxScreen/2019-airtoxscreen>.

³²¹ South Coast Air Quality Management District (2012) Adoption of 2012 Lead SIP Los Angeles County by South Coast Governing Board, p.3–11, Table 3–3. Available at <https://www.aqmd.gov/home/air-quality/clean-air-plans/lead-state-implementation-plan>. The South Coast Air Quality Management District identified 22 airports in the Los Angeles County-South Coast Air Basin nonattainment area; the Whiteman Airport is among those in the nonattainment area and the EPA estimated activity at this airport may increase lead concentrations to levels above the lead NAAQS in the report, Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports. Table 7. EPA, Washington, DC, EPA-420-R-20-003, 2020. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>.

³²² EPA provides updated information regarding nonattainment areas at this website: <https://www.epa.gov/green-book/green-book-lead-2008-area-information>.

C. Response to Certain Comments on the Cause or Contribute Finding

The EPA received comments related to the contribution of lead emissions from engines in covered aircraft to lead air pollution. Commenters provided both support for and opposition to the EPA's proposed cause or contribute finding, with specific comments regarding the amount of lead emitted by aircraft operating on leaded fuel and the contribution of aircraft engine emissions to lead concentrations in the air.

Numerous commenters state their support for the proposed cause or contribute finding, in some cases noting that ample evidence supports this finding and highlighting the important role that lead emissions from covered aircraft engines have in local environments in many areas of the U.S. Additional commenters express concern regarding monitored lead concentrations that exceed the NAAQS at some airports. The comments expressing support for the proposed cause or contribute finding and EPA's responses are described in greater detail in the Response to Comment document for this action. We acknowledge these comments and the support expressed for the EPA's cause or contribute finding, and we agree with the commenters that lead emissions from engines in covered aircraft contribute to lead air pollution.

Commenters stating opposition to the cause or contribute finding based on the amount of lead emitted by aircraft operating on leaded fuel, assert that lead emissions today are 425 times less than lead emissions of the 1970s or that the emissions of lead from aircraft are less than one quarter of one percent of the emissions from cars in the 1970s. Some commenters also state that it only stands to reason that covered aircraft engine emissions of lead represent a high percentage of current lead emissions because lead is no longer being emitted by motor vehicles. At least one additional commenter states that given the number of hours flown by covered aircraft, they do not contribute enough lead to affect air pollution.

Commenters stating opposition to the cause or contribute finding based on the concentrations of lead in air from engine emissions by covered aircraft state that concentrations of lead exceeding the lead NAAQS are rare, representing two of 17 airports studied. One commenter also notes that Table 2 (in section II.A.3. of this document) does not address the localized conditions of the airports studied and that the airports where lead concentrations violated the lead NAAQS may have unique conditions that resulted in the concentrations

measured. Additionally, some commenters state that there is no evidence that engine emissions of lead are creating a hazard, and that the lead emitted is not toxic in the small amount emitted by aircraft engines.

In response to commenters comparing emissions of lead from covered aircraft to lead emitted by motor vehicles in the 1970s, the EPA acknowledges that more lead was emitted by motor vehicles in the 1970s than is emitted by covered aircraft engines currently. This cause or contribute finding is focused on emissions of lead from covered aircraft engines, a different category of mobile sources from motor vehicles, and the commenters do not explain why the fact that historical emissions were higher from a different source category means that current emissions from covered aircraft engines are not contributing to the existing lead air pollution. Similarly, the historical contributions of lead emitted by motor vehicles is not germane to the present-day analysis of the contribution of lead emissions from covered aircraft engines to the total lead released to the air annually in the U.S. Indeed, nothing in CAA section 231(a) precludes EPA from making a cause or contribute finding for emissions from aircraft engines where such a finding is warranted, even if emissions from other sources regulated elsewhere in the CAA or under other Federal programs may also contribute to that air pollution or have historically contributed to it. See *Massachusetts v. E.P.A.*, 549 U.S. 497, 533 (2007) (the alleged efficacy of other "Executive Branch programs" in addressing the air pollution problem is not a valid reason for declining to make an endangerment finding). As noted previously, in making a cause or contribute finding, CAA section 231 does not require the EPA to find that the contribution from the relevant source category is "significant," let alone the sole or major cause of the endangering air pollution. As described in section V.B., the lead emissions from engines used in covered aircraft clearly contribute to the endangering lead air pollution, as these emissions contributed over 50 percent of lead emissions to air starting in 2008, when approximately 560 tons of lead were emitted by engines in covered aircraft, and more recently, in 2017, when approximately 470 tons of lead were emitted by engines in covered aircraft. In the EPA's view, both the quantity and percentage of lead emitted by covered aircraft engines amply demonstrate that this source contributes to lead air pollution in the U.S.

In response to commenters stating that the number of hours flown by

covered aircraft do not contribute enough lead to affect air pollution, the EPA notes that the commenters made a conclusory allegation and did not provide data or analysis supporting their claim. The EPA disagrees with this comment, and we present data in section V.B. of this document demonstrating that the activity by covered aircraft, which includes the number of hours flown, contributes to lead air pollution as described in the preceding paragraph.

In response to commenters asserting that concentrations of lead exceeding the lead NAAQS are rare, representing two of 17 airports studied, as an initial matter, the EPA notes that nothing in section 231(a) of the CAA premises the cause or contribute finding on emissions from the relevant classes of aircraft engines contributing to such exceedances in a minimum number of air quality regions. More importantly, the EPA notes that the purpose of this airport monitoring study was not to determine the frequency with which potential violations of the lead NAAQS occur at or near airports, but to understand the potential range in lead concentrations at a small sample of airports and the factors that influence those concentrations. As described in section II.A.3. of this document, the concentrations of lead monitored at and near highly active general aviation airports is largely determined by the placement of the monitor relative to the run-up area, and monitor placement relative to the run-up area was not uniform across the airports studied. The EPA fully explains the basis on which the Administrator finds that emissions of lead from covered aircraft engine emissions cause or contribute to lead air pollution. The data that support this finding are presented in section V.B. and, as articulated in section V.D., where, among other data, the Administrator takes into account the fact that in some situations lead emissions from covered aircraft have contributed and may continue to contribute to air concentrations that exceed the lead NAAQS. Given that the lead NAAQS are established to provide requisite protection of public health and welfare, the Administrator expresses particular concern with contributions to concentrations that exceed the lead NAAQS, and those contributions are part of the support for the conclusion that lead emissions from engines in covered aircraft cause or contribute to the endangering air pollution.

In response to the comment regarding the assertion that the two airports where lead concentrations violated the lead NAAQS may have unique conditions

that resulted in the concentrations measured, the EPA notes that the commenter did not specify or explain what localized conditions might lead to this result; nor did they provide supporting evidence for localized conditions occurring in these areas that could explain these lead concentrations presented in Table 2 of this document. The EPA describes in section II.A.3. of this document that at both of these airports, monitors were located in close proximity to the area at the end of the runway most frequently used for pre-flight safety checks (*i.e.*, run-up), and monitor placement relative to the run-up area is a key factor in evaluating the maximum impact location attributable to lead emissions from piston-engine aircraft. Additionally, as described in section II.A.3. of this document, air lead concentrations at and downwind from airports can be influenced by factors such as the use of more than one run-up area, wind speed, and the number of operations conducted by single- versus twin-engine aircraft.³²³ At the two airports at which concentrations of lead violated the lead NAAQS, the EPA observed a similar fleet composition of single- versus twin-engine aircraft compared with other airports where on-site measurements were taken; wind speeds, which are inversely proportional to lead concentration, were not lower at the airports with lead concentrations violating the lead NAAQS compared with other airports; and these airports were not unique in that the activity by piston-engine aircraft was in the range of activity by these aircraft at the majority of airports where monitors were located.³²⁴ The EPA thus concludes that these two airports do not have unique conditions responsible for the concentrations of lead that violated the lead NAAQS.

In response to the comments that there is no evidence that engine emissions of lead are creating a

hazard,³²⁵ and that the lead emitted is not toxic in the small amount emitted by aircraft engines, we note that these comments conflate the endangerment and cause or contribute steps of the analysis. The text in section 231(a)(2) provides for the EPA to make a finding based on a determination that emissions of the air pollutant from the covered aircraft engine “causes, or contributes to” the air pollution. In making a cause or contribute finding, the EPA need not additionally and separately make a determination as to whether the emissions from covered aircraft engines alone cause endangerment. In section IV. of this document, the EPA explained why the Administrator is finding that the lead air pollution endangers public health and welfare. The only remaining issue at the second step of the analysis is whether emissions from the analyzed class or classes of aircraft engines cause or contribute to the air pollution that may reasonably be anticipated to endanger public health and welfare. For the reasons described in section V. of this document, in the Administrator’s judgment, emissions of the lead air pollutant from engines in the covered aircraft cause or contribute to the lead air pollution.

Additional comments were submitted to the EPA regarding the emissions, deposition, transport, and fate of lead emitted by covered aircraft engines. The EPA responds to these comments in the Response to Comments Document for this action.

D. Final Cause or Contribute Finding for Lead

Taking into consideration the data and information summarized in section V. of this document, and the public comments received on the proposed finding, the Administrator finds that engine emissions of the lead air pollutant from covered aircraft cause or contribute to the lead air pollution that may reasonably be anticipated to endanger public health and welfare. In reaching this conclusion, the Administrator noted that piston-engine aircraft operate on leaded avgas. That operation emits lead-containing compounds into the air, contributing to lead air pollution in the environment. As explained in section II.A. of this document, once emitted from covered aircraft, lead may be transported and distributed to other environmental media, where it presents the potential for human exposure through air and

non-air pathways before the lead is removed to deeper soils or waterbody sediments. In reaching this final finding, the Administrator takes into consideration different air quality scenarios in which emissions of the lead air pollutant from engines in covered aircraft may cause or contribute to lead air pollution. Among these considerations, he places weight on the fact that current lead emissions from covered aircraft are an important source of air-related lead in the environment and that engine emissions of lead from covered aircraft are the largest single source of lead to air in the U.S. in recent years. In this regard, he notes that these emissions contributed over 50 percent of lead emissions to air starting in 2008, when approximately 560 tons of lead was emitted by engines in covered aircraft (of the total 950 tons of lead) and, more recently, in 2017, when approximately 470 tons of lead was emitted by engines in covered aircraft (of the total 670 tons of lead).³²⁶

Additionally, he takes into account the fact that in some situations lead emissions from covered aircraft have contributed and may continue to contribute to air concentrations that exceed the lead NAAQS. The NAAQS are standards that have been set to protect public health, including the health of sensitive groups, with an adequate margin of safety and to protect public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. For example, the EPA’s monitoring data show that lead concentrations at two airports, McClellan-Palomar and San Carlos, violated the lead NAAQS. The EPA’s model-extrapolated estimates of lead also indicate that some U.S. airports may have air lead concentrations above the NAAQS in the area of maximum impact from operation of covered aircraft.³²⁷ Given that the lead NAAQS are established to protect public health and welfare, contributions to concentrations that exceed the lead NAAQS are of particular concern to the Administrator and are persuasive support for the conclusion that lead emissions from engines in covered

³²³ The data in Table 2 represent concentrations measured at one location at each airport and monitors were not consistently placed in close proximity to the run-up areas. As described in section II.A.3., monitored concentrations of lead in air near airports are highly influenced by proximity of the monitor to the run-up area. In addition to monitor placement, there are individual airport factors that can influence lead concentrations (*e.g.*, the use of multiple run-up areas at an airport, fleet composition, and wind speed). The monitoring data reported in Table 2 reflect a range of lead concentrations indicative of the location at which measurements were made and the specific operations at an airport.

³²⁴ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports Appendix B, Table B–2. EPA–420–R–20–003, 2020. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>.

³²⁵ While the comment does not clearly explain what it is referring to with the phrase “creating a hazard,” we understand that phrase to align with the “cause” portion of the cause or contribute findings.

³²⁶ The lead inventories for 2008, 2011 and 2014 are provided in the U.S. EPA (2018b) Report on the Environment Exhibit 2. Anthropogenic lead emissions in the U.S. Available at <https://cfpub.epa.gov/roe/indicator.cfm?i=13#2>. The lead inventories for 2017 are available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data#dataq>.

³²⁷ EPA (2020) Model-extrapolated Estimates of Airborne Lead Concentrations at U.S. Airports Table 7. EPA–420–R–20–003, 2020. Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YG52.pdf>.

aircraft cause or contribute to the endangering air pollution.

The Administrator is also concerned about the likelihood for these emissions to continue to be an important source of air-related lead in the environment in the future, if uncontrolled. While recognizing that national consumption of leaded avgas is forecast to decrease slightly from 2026 to 2041 commensurate with overall piston-engine aircraft activity, the Administrator also notes that these changes are not expected to occur uniformly across the U.S.³²⁸ For example, he takes note of the FAA forecasts for airport-specific aircraft activity out to 2045 that project decreases in activity by general aviation at some airports, while projecting increases at other airports.³²⁹ Although there is some uncertainty in these projections, they indicate that lead emissions from covered aircraft may increase at some airports in the future. Thus, even assuming that consumption of leaded avgas and general aviation activity decrease somewhat overall, as projected, the Administrator anticipates that current concerns about these sources of air-related lead will continue into the future, without controls. Accordingly, the Administrator is considering both current levels of emissions and anticipated future levels of emissions from covered aircraft. In doing so, the Administrator finds that current levels cause or contribute to pollution that may reasonably be anticipated to endanger public health and welfare. He also is taking into consideration the projections that some airports may see increases in activity while others see decreases, as well as the uncertainties in these predictions. The Administrator therefore considers all this information and data collectively to inform his judgment on whether lead emissions from covered aircraft cause or contribute to endangering air pollution.

Accordingly, for all the reasons described, the Administrator concludes that emissions of the lead air pollutant from engines in covered aircraft cause or contribute to the lead air pollution that

may reasonably be anticipated to endanger public health and welfare.

VI. Statutory Authority and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a “significant regulatory action” as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. This action finalizes a finding that emissions of the lead air pollutant from engines in covered aircraft cause or contribute to the lead air pollution that may be reasonably anticipated to endanger public health and welfare.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The final endangerment and cause or contribute findings under CAA section 231(a)(2)(A) do not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The final endangerment and cause or contribute findings under CAA section 231(a)(2)(A) do not in-and-of-themselves impose any new requirements on any regulated entities but rather set forth the Administrator’s finding that emissions of the lead air pollutant from engines in covered aircraft cause or contribute to lead air pollution that may be reasonably anticipated to endanger public health and welfare.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. The final endangerment and cause or contribute findings under CAA section 231(a)(2)(A) do not in-and-of-themselves impose any new requirements but rather set forth the Administrator’s final finding that emissions of the lead air pollutant from engines in covered aircraft cause or contribute to lead air pollution that may be reasonably anticipated to endanger public health and welfare. Thus, Executive Order 13175 does not apply to this action.

Tribes have previously submitted comments to the EPA noting their concerns regarding potential impacts of lead emitted by piston-engine aircraft operating on leaded avgas at airports on, and near, their Reservation Land.³³⁰ The EPA plans to continue engaging with Tribal stakeholders on this issue and will offer a government-to-government consultation upon request.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects on children of a planned regulation in setting Federal health and safety standards. This action is not subject to Executive Order 13045 because it does not propose to establish an environmental standard intended to mitigate health or safety risks. Although the Administrator considered health and safety risks as part of the endangerment and cause or contribute findings under CAA section 231(a)(2)(A), the findings themselves do not impose a standard intended to mitigate those risks. However, the EPA’s Policy on Children’s Health applies to this action. Consistent with this policy,

³²⁸ FAA Terminal Area Forecast provides projections of aircraft activity at airports. The forecast is available at <https://taf.faa.gov> and the FAA Terminal Area Forecast for Fiscal Years 2020–2045 describes the forecast method, data sources, and review process for the TAF estimates, available at: <https://taf.faa.gov/Downloads/TAFSummaryFY2020-2045.pdf>.

³²⁹ Geidosch. Memorandum to Docket EPA–HQ–OAR–2022–0389. Past Trends and Future Projections in General Aviation Activity and Emissions. June 1, 2022. Docket ID EPA–HQ–2022–0389.

³³⁰ See Docket ID Number EPA–HQ–OAR–2006–0735. The Tribes that submitted comments were: The Bad River Band of Lake Superior Tribe of Chippewa Indians, The Quapaw Tribe of Oklahoma, The Leech Lake Band of Ojibwe, The Lone Pine Paiute-Shoshone Reservation, The Fond du Lac Band of Lake Superior Chippewa, and The Mille Lacs Band of Ojibwe.

the Administrator considered lead exposure risks to children as part of this final endangerment finding under CAA section 231(a)(2)(A). Information on how the Policy was applied is available under “Children’s Environmental Health” in the **SUPPLEMENTARY INFORMATION** section B. of this document. A copy of the documents pertaining to the impacts on children’s health from emissions of lead from piston-engine aircraft that the EPA references in this action have been placed in the public docket for this action (Docket EPA–HQ–OAR–2022–0389).

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this action is not likely to have any adverse energy effects because the final endangerment and cause or contribute findings under section 231(a)(2)(A) do not in-and-of themselves impose any new requirements but rather set forth the Administrator’s finding that emissions of the lead air pollutant from engines in covered aircraft cause or contribute to lead air pollution that may be reasonably anticipated to endanger public health and welfare.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. The EPA conducted an analysis of people living within 500 meters or one kilometer of airports and found that there is a greater prevalence of people of color and of low-income populations within 500 meters or one kilometer of some airports compared with people living more distant. The EPA provides a summary of the evidence for potentially disproportionate and adverse effects

among people of color and low-income populations residing near airports in section II.A.5. of this document. A copy of the documents pertaining to the EPA’s analysis of potential environmental justice concerns regarding populations who live in close proximity to airports has been placed in the public docket for this action (Docket EPA–HQ–OAR–2022–0389).

The EPA believes that this action will not change existing disproportionate and adverse effects on communities with environmental justice concerns. In this action, the EPA finds, under section 231(a)(2)(A) of the Clean Air Act, that emissions of lead from engines in covered aircraft may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. We are not proposing emission standards at this time.

The EPA additionally promoted fair treatment and meaningful involvement for the public, including for communities with environmental justice concerns, in this action by briefing Tribal members on this action and providing information on our website in both Spanish and English, as well as providing access to Spanish translation during the public hearing.

K. Congressional Review Act (CRA)

The EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Determination Under Section 307(d)

Section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to “such other actions as the administrator may determine.” Pursuant to section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d).

M. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion

whether to invoke the exception in (ii) described in the preceding sentence.³³¹

This action is “nationally applicable” within the meaning of CAA section 307(b)(1) because in issuing these final findings, the EPA becomes subject to a statutory duty to propose and promulgate aircraft engine emission standards under CAA section 231(a), which are nationally applicable regulations for which judicial review is available only in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) pursuant to CAA section 307(b)(1). Further, these emission standards would apply to covered aircraft, wherever in the nation they are located. We note also that similar actions, including the 2016 Endangerment and Cause or Contribute Findings under CAA section 231 for greenhouse gases and the 2009 Endangerment and Cause or Contribute Findings under CAA section 202(a) for greenhouse gases, were also nationally applicable³³² and were challenged in the D.C. Circuit.³³³

In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).³³⁴ In issuing these final findings, the EPA becomes subject to a statutory duty to propose and promulgate emissions standards under CAA section 231(a), which would apply nationwide to covered aircraft that travel and operate within multiple judicial circuits. As described in section III. of this document, in making these findings, the EPA is applying the same analytical framework that the Agency applied in the 2016 Endangerment and Cause or

³³¹ *Sierra Club v. EPA*, 47 F.4th 738, 745 (D.C. Cir. 2022) (“EPA’s decision whether to make and publish a finding of nationwide scope or effect is committed to the agency’s discretion and thus is unreviewable”); *Texas v. EPA*, 983 F.3d 826, 834–35 (5th Cir. 2020).

³³² 81 FR 54422 (Aug. 15, 2016) (2016 Findings); 74 FR 66496 (2009 Findings).

³³³ *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (subsequent history omitted) (affirming 2009 Findings); *Biogenic CO2 Coalition v. EPA* (Doc. No. 1932392, No. 16–1358, D.C. Cir., January 26, 2022) (granting petitioner’s motion to voluntarily dismiss petition for review of 2016 Findings).

³³⁴ In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

Contribute Findings under CAA section 231 for greenhouse gases and the 2009 Endangerment and Cause or Contribute Findings under CAA section 202(a) for greenhouse gases, both of which were challenged in the D.C. Circuit, as noted above.

The Administrator finds that this is a matter on which national uniformity in judicial resolution of any petitions for review is desirable, to take advantage of the D.C. Circuit's administrative law expertise, and to facilitate the orderly development of the law under the Act. The Administrator also finds that consolidated review of this action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results, and that a nationally consistent approach to the CAA's provisions related to making endangerment and cause or contribute findings under section 231 of the CAA,

including for lead air pollution and emissions of lead from engines in covered aircraft as here, constitutes the best use of agency resources.

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by December 19, 2023.

VII. Statutory Provisions and Legal Authority

Statutory authority for this action comes from 42 U.S.C. 7571, 7601 and 7607.

List of Subjects

40 CFR Parts 87 and 1031

Environmental protection, Air pollution control, Aircraft, Aircraft engines.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Michael S. Regan,

Administrator.

[FR Doc. 2023-23247 Filed 10-19-23; 8:45 am]

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Proposed Rules

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Friday, October 20, 2023

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

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[NOTICE 2023–17]

Size of Letters in Disclaimers

AGENCY: Federal Election Commission.

ACTION: Notification of disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on December 4, 2018, by Extreme Reach. The Petition asks the Commission to amend its regulation on the size of letters in disclaimers in certain television advertisements such that the required letter size for advertisements broadcast in high definition would be reduced. Because changing the Commission's regulations as requested in the Petition would create a direct conflict with regulations of the Federal Communications Commission, the Commission is not initiating a rulemaking at this time.

DATES: October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, 52 U.S.C. 30101–45 (the “Act”), and Commission regulations generally require public communications to feature disclaimers if they are made by a political committee, expressly advocate the election or defeat of a clearly identified Federal candidate, or solicit contributions.¹ The information these disclaimers must contain depends on whether the public communications were authorized or funded by a Federal candidate, an authorized committee of a Federal candidate, or an agent of either.² Every disclaimer must appear in a clear and conspicuous manner to provide the

reader, observer, or listener adequate notice of who paid for or authorized the communication.³ A disclaimer is not clear and conspicuous if it is difficult to read or hear or if its placement is easily overlooked.⁴

Disclaimers on public communications transmitted through television or any broadcast, cable, or satellite transmission must meet certain additional requirements. Notably, the disclaimer must appear in letters equal to or greater than four percent of the communication's vertical picture height.⁵

On December 4, 2018, the Commission received a Petition for Rulemaking from Extreme Reach (the “Petition”). The Petition asks the Commission to amend 11 CFR 110.11(c)(3)(iii)(A) in two respects: (1) to specify that the four percent vertical picture height requirement applies only to the standard definition format; and (2) to add a separate requirement for the high-definition format where letters must be equal to or greater than two percent of the vertical picture height.

The Petition argues that the Commission's current four-percent minimum standard for disclaimers on high-definition-resolution television advertisements is outdated. The Petition asserts that the four-percent standard reflects a period when television was broadcast only in standard definition; that most television advertising currently is in high-definition resolution; and that the current industry standard size of a normal disclaimer is 22 pixels, or only about two percent of the vertical picture height, using high-definition resolution.⁶ The Petition includes a copy of a publication of the International Telecommunication Union and the disclaimer portions of advertising guidelines from the ABC, CBS, and NBC television networks to support its claims.⁷

The Commission published a Notification of Availability on February 12, 2019, asking for public comment on the Petition.⁸ The Commission received 27 comments from 26 commenters in response: One comment supported the

Petition; the remaining comments opposed the Petition.⁹

The comments opposing the Petition asserted several reasons for doing so. One such comment, submitted by a nonprofit trade association whose members include television stations and broadcast networks, asserted that modifying the regulation would force broadcasters to reject FEC-compliant political advertising to avoid violating Federal Communications Commission (“FCC”) rules.¹⁰ The comment stated that FCC regulations require the sponsor of televised political ads to be identified “with letters equal to or greater than four percent of the vertical picture height,” leading to an “untenable conflict” if the FEC revised its regulation.¹¹ The comment also contended that reducing the size of the letters might result in unreadable disclaimers for some viewers because whether a viewer can read a disclaimer will depend on “the mechanism for receiving the broadcast signal (e.g., over the air, through a cable system), the device used for displaying the ad (e.g., an older analog television receiver, a 65-inch HD television) and the visual acuity of the viewer.”¹² Further, the comment disputed the Petition's claim that a two-percent standard would be consistent with current industry guidelines. The comment noted that only one of the three network guidelines submitted with the Petition specifies 22 scanlines as a minimum height to assure legibility.¹³

The remaining comments opposing the Petition were filed by individuals. Of these, two stated that the proposed standard contradicts the purpose of the disclaimer requirement in the Act, which they described as “provid[ing] transparency” and “ensur[ing] voters are well-informed.”¹⁴ The remaining comments were primarily concerned that the two-percent standard would make disclaimers harder to read.

A comment filed by a nonpartisan, nonprofit organization supported the Petition. The comment asserted that

⁹ Of the comments opposing the petition, one was submitted by an organization, and the remaining 25 were submitted by individuals (one of whom submitted two comments).

¹⁰ National Association of Broadcasters, Comment.

¹¹ *Id.* at 1–2.

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ A. Spencer, Comment; S. Tinsley, Comment.

¹ See 52 U.S.C. 30120(a); 11 CFR 110.11(a).

² See 52 U.S.C. 30120(d); 11 CFR 110.11(b), (c).

³ 52 U.S.C. 30120(c), (d); 11 CFR 110.11(c).

⁴ 11 CFR 110.11(c).

⁵ See 11 CFR 110.11(c)(3)(iii)(A), (c)(4)(iii)(A).

⁶ Petition at 1.

⁷ *Id.* at 9–12, 13–31.

⁸ Rulemaking Petition; Size of Letters in Disclaimers, 84 FR 3344 (Feb. 12, 2019).

most televisions in use today “are significantly larger than those of the 1970’s when [the Act] was enacted, and even than the televisions of the early 2000’s when [the Bipartisan Campaign Reform Act] was enacted.”¹⁵ Consequently, the comment stated, “[w]hile still proportionally 4% of the screen, the disclaimer itself has significantly increased in size, and will continue to increase as screen size grows.”¹⁶ The comment further asserted that “the disclaimer visibility proposed in the Petition can easily be seen and read by the human eye.”¹⁷

After considering the comments received, the Commission has decided not to initiate a rulemaking at this time. The Petition’s proposal that the Commission reduce the minimum permissible size of disclaimers on political advertisements appearing in high-definition format to just two percent of the vertical picture height would create a conflict between the Commission’s regulations and the FCC’s regulation requiring broadcasters under the FCC’s jurisdiction to carry disclaimers on televised political advertisements “with letters equal to or greater than four percent of the vertical picture height.”¹⁸ Indeed, the Commission adopted the minimum four-percent disclaimer standard in 1995 precisely to be consistent with the FCC’s four-percent standard.¹⁹ As the Commission recognized in that rulemaking, “the FCC and not the FEC has authority over these technical requirements” for broadcasters.²⁰ Further, neither the Petition nor the public comments provided a compelling reason for the Commission to depart from its current minimum four-percent standard.²¹

For the above reasons, the Commission therefore declines to

commence a rulemaking to revise its regulation on the size of letters in disclaimers on television ads at 11 CFR 110.11(c)(3)(iii)(A).

Copies of the comments and the Petition for Rulemaking are available on the Commission’s website, <http://www.fec.gov/fosers/> (REG 2018–05 Size of Letters in Disclaimers (2018)), and at the Commission’s Public Records Office, 1050 First Street NE, Washington, DC 20002, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Dated: October 16, 2023.

On behalf of the Commission.

Dara Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–23122 Filed 10–19–23; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 112

[NOTICE 2023–16]

Advisory Opinion Comment Procedures

AGENCY: Federal Election Commission.

ACTION: Notification of disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking. The Petition asked the Commission to modify its regulation on written comments on advisory opinion requests to provide time for the public to comment on drafts of advisory opinions before the Commission votes on the drafts. For the reasons described in detail below, the Commission is not initiating a rulemaking at this time.

DATES: October 20, 2023.

FOR FURTHER INFORMATION CONTACT:

Robert M. Knop, Assistant General Counsel, or Mr. Evan R. Christopher, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act (the “Act”), 52 U.S.C. 30101–45, authorizes the Commission to issue advisory opinions on written questions about the applicability of the Act or Commission regulations to a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future.¹ The persons involved in the specific activity described in the request, as well as any person involved in an activity “which is indistinguishable in all its

material aspects” from the specific activity described in the request, may rely on the advisory opinion to avoid sanction by the Commission for engaging in that activity.²

The Act and Commission regulations require the Commission to respond to all requests for advisory opinions.³ The Commission must respond to any advisory opinion request (“AOR”) that is complete and qualified under 11 CFR 112.1(b)⁴ with either a formal advisory opinion (“AO”) or notice that the Commission was unable to issue an AO with the required minimum of four affirmative votes.⁵ The Commission must publicize receipt of a complete and qualified AOR and formally respond within 20 or 60 days of receiving a complete AOR.⁶

Requestors and interested persons are provided several opportunities to participate in the Commission’s AOR process. First, the Act requires that the Commission provide a 10-day window for public comment on complete, qualified, AORs before the Commission issues a formal response.⁷ Second, beginning provisionally in 1993 and adopted formally in 2009, it is the Commission’s policy to seek comments on drafts of advisory opinions, which it endeavors to release at least one week before the meeting at which it will consider the AOR and any draft AOs.⁸ Third, the Commission allows an AOR requestor to ask to appear before the Commission to answer questions about the AOR at the open meeting at which the Commission considers the AOR and

² 11 CFR 112.5.

³ See 52 U.S.C. 30108(a); 11 CFR 112.4(a) and (b).

⁴ The Commission must respond to a person who submits an incomplete AOR or one that does not qualify under 11 CFR 112.1(b) within 10 days to “specify the deficiencies in the request.” 11 CFR 112.1(d).

⁵ See 52 U.S.C. 30108(a); 11 CFR 112.4(a) and (b).

⁶ *Id.* Candidates are entitled to receive a response to a AOR within 20 days if the request is made within 60 days of an election in which the candidate is participating and it presents a specific transaction or activity related to the election that may invoke the 20 day period if the connection is explained in the request. See 52 U.S.C. 30108(a)(2); 11 CFR 112.4(b). Further, the Commission has an informal process under which it may, upon request, issue an opinion within 30 days under certain circumstances. See Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures, 74 FR 32160 (July 7, 2009).

⁷ See 52 U.S.C. 30108(d); see also 11 CFR 112.3.

⁸ See Revision to Advisory Opinion Comment Procedure, 58 FR 62259 (Nov. 26, 1993); Notice of Advisory Opinion Procedure, 74 FR 32160 (July 7, 2009). The Commission endeavors to release at least one draft AO at least one week in advance. Drafts that are not available by the one-week deadline are required to be identified as “late submit[te]d” and subject to additional procedural requirements before the Commission may consider them. See Comm’n Dir. No. 17 (effective date May 6, 2021), available at https://www.fec.gov/resources/cms-content/documents/directive_17.pdf.

¹⁵ Institute for Free Speech, Comment at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ 47 CFR 73.1212(a)(2)(ii).

¹⁹ See Communications Disclaimer Requirements, 60 FR 52069, 52071 (Oct. 5, 1995) (noting that “the FCC conducted a lengthy rulemaking, in which the FEC participated, before deciding that the current standards were appropriate”).

²⁰ *Id.* Thus, even if this Commission were to revise its standard, disclaimers on advertisements falling within the FCC’s jurisdiction would still be subject to the FCC’s minimum four-percent size requirement.

²¹ The Petition does not provide information supporting its contention that there is an industry standard for the size of letters in disclaimers, or that the standard is or should be two percent of the vertical picture height. Only one of the three network advertising guidelines submitted with the Petition has established 22 pixels as a minimum size for disclaimers. Petition at 3–6. Moreover, as this is a minimum standard, a disclaimer appearing at greater than 22 pixels would be consistent with that guideline.

¹ See 52 U.S.C. 30108(a); see also 11 CFR part 112.

any draft AOs; if the Commission does not release a copy of all draft AOs under consideration at least one week before the open meeting at which the draft AOs are to be considered, the requestor is automatically entitled to appear before the Commission at that meeting.⁹

On February 10, 2016, the Commission received a Petition for Rulemaking from Make Your Laws PAC, Inc., Make Your Laws Advocacy, Inc., Make Your Laws, Inc., and Dan Backer, Esq. (“Petition”). The Petition asked the Commission to amend 11 CFR 112.3 to provide a right to the public to comment on draft AOs with a fixed comment period and a requirement that the Commission publish “redlines”—copies of documents showing the differences between drafts—when releasing multiple draft AOs.¹⁰ The Petition argued that the “spirit of the rule is to encourage the public to participate in the Commission’s decision-making process. However, without the corresponding draft opinions, requests alone may not enable the public to fully appreciate the impact of such requests or to make fully informed comments.”¹¹

The Commission published a Notification of Availability (“NOA”) on December 3, 2018, asking for public comment on the Petition.¹² The Commission received one comment in response to the NOA. The comment supported the Petition for several reasons. The comment argued that amending the regulation as proposed by the Petition would bring greater “transparency to the Commission’s advisory opinion process and to ensure the public has a meaningful opportunity to weigh in” before the Commission votes on the drafts.¹³ The comment further stated that allowing comments on AO drafts is important because AOs, “in practice, often provide general answers to unresolved legal questions in a manner that affects broad categories of individuals and entities.”¹⁴

After considering the Petition and the comment, the Commission has decided not to initiate a rulemaking at this time. As outlined here, the Act and existing regulations provide for a meaningful opportunity for public comment on AORs; adding to that, the Commission has substantially expanded opportunities for public comment by committing to releasing draft AOs in advance, soliciting comments on those

drafts, and allowing AOR requestors to appear before the Commission when their AOR and any draft AOs are being considered.

Neither the Act nor existing Commission regulations require the Commission to accommodate this level of public participation in the AO drafting process. However, the Act and accompanying regulations do impose strict timing requirements on when the Commission must respond to AORs: as soon as 20 days and in no event later than 60 days after receiving a complete AOR. These are binding, bright-line requirements; the Commission cannot bend or break them. As a result, the Commission must balance its strict obligations under Federal law with any desire it may have to encourage participation by requestors and the public. To date, the Commission has done so by adopting policies that expand opportunities for public participation wherever possible while still retaining the flexibility the Commission requires to meet its obligations under Federal law. Those obligations are not insignificant; the Commission notes that 10 of the 20 or 60 days it is allotted to respond to a typical AOR are devoted to receiving public comments, each of which the Commission must consider in addition to analyzing the facts and materials submitted with the AOR, researching relevant legal authority, developing a legal theory and draft response, circulating drafts, and building a majority consensus behind a final opinion the Commission can approve.

For that reason, the Commission believes that creating additional, expanded, and strictly defined rights to public comment on draft AOs is not necessary and would likely prove unworkable within the Commission’s short deadlines for issuing AOs. Requiring the Commission to devote resources to marking up and circulating one or multiple draft AOs within a fixed timeframe, as proposed by the Petition, would unduly constrain the Commission in ways that could impair its ability to timely and effectively respond to AORs. The potential adverse effects of this constraint outweigh any prospective benefit to public input or transparency, particularly in light of the Commission’s existing policies ensuring robust public engagement.

For the above reasons, the Commission therefore declines to commence a rulemaking to amend its regulation at 11 CFR 112.3 to provide a right to comment on one or multiple advisory opinion drafts a certain amount of time in advance of the Commission meeting at which those

drafts will be discussed and to require the Commission to release “redlines” showing edits among multiple drafts.

Copies of the Comments and the Petition are available on the Commission’s website, <https://www.fec.gov/fosers/> (REG 2016–01 Advisory Opinion Procedures) and at the Commission’s Public Records Office, 1050 First Street NE, Washington, DC, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Dated: October 16, 2023.

On behalf of the Commission,

Dara Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–23124 Filed 10–19–23; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2027; Airspace Docket No. 23–AMN–15]

RIN 2120–AA66

Establishment of Class E Airspace; Antone Ranch Airport, Mitchell, OR (640G)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Antone Ranch Airport, Mitchell, OR, in support of the airport’s forthcoming transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Comments must be received on or before December 4, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2027 and Airspace Docket No. 23–AMN–15 using any of the following methods:

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

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

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9

⁹ See Notice of Advisory Opinion Procedure, 74 FR 32160.

¹⁰ Petition at 4.

¹¹ *Id.* at 1.

¹² Rulemaking Petition: Advisory Opinion Procedures, 83 FR 62283 (Dec. 3, 2018).

¹³ Comment from Campaign Legal Center at 2.

¹⁴ *Id.*

a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace to support IFR operations at Antone Ranch Airport, Mitchell, OR.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments,

commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Incorporation by Reference

The Class E5 airspace designation is published in paragraph 6005, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That

order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H 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 that would establish Class E airspace extending upward from 700 feet above the surface at Antone Ranch Airport, Mitchell, OR, in support of the airport's forthcoming transition from VFR to IFR operations.

This airspace would extend 8.4 miles east and 10.4 miles west and northwest of the airport reference point (ARP). The configuration is designed to contain departing and missed approach IFR operations until reaching 1,200 feet above the surface on the Runway (RWY) 7 and RWY 25 RIFTE ONE (OBSTACLE) Area Navigation (RNAV) departures, and the RNAV (Global Positioning System [GPS]) M RWY 25 missed approach. Additionally, this proposal is designed to contain arriving IFR operations below 1,500 feet above the surface on the RNAV (GPS) M RWY 25 approach. This action would support the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

ANM WA E5 Mitchell, OR [New]

Antone Ranch Airport, OR

(Lat. 44°29'34" N, long. 119°50'38" W)

That airspace extending upward from 700 feet above the surface within 2.2 miles either side of the 098° bearing extending to the airport 8.4-mile radius, and within 2.2 miles either side of the 278° bearing extending to the airport 10.4-mile radius, and within an area bounded by a line beginning at the 290° bearing at 10.4 miles, then clockwise along the airport's 10.4-mile radius to the 317° bearing, to the 327° bearing at 7.1 miles, to the 310° bearing at 4.1 miles, thence to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on October 13, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–23128 Filed 10–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103525–23]

RIN 1545–BQ67

Plan-Specific Substitute Mortality Tables for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed regulations that would update the requirements that a plan sponsor of a single-employer defined benefit plan must meet to obtain IRS approval to use mortality tables specific to the plan in calculating present value for minimum funding purposes (as a substitute for the generally applicable mortality tables). These regulations would affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

DATES: Written or electronic comments and requests for a public hearing must be received by December 19, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–103525–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG–103525–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Arslan Malik or Linda S. F. Marshall at (202) 317–6700 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317–6901 (not a toll-free number) or by sending an email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are single-employer plans (that is, not multiemployer plans).¹ For a plan

subject to section 430, section 430(a) defines the minimum required contribution for a plan year by reference to the plan’s funding target for the plan year. Under section 430(d)(1), a plan’s funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Section 430(h)(3)(C) prescribes rules for a plan sponsor’s use of substitute mortality tables reflecting the specific mortality experience of a plan’s population instead of using the generally applicable mortality tables. Under section 430(h)(3)(C), the plan sponsor may request the Secretary’s approval to use plan-specific substitute mortality tables that meet requirements specified in the statute. If the Secretary determines that the proposed tables meet the statutory standards and approves the request, the substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request.

Under section 430(h)(3)(C)(iii), a substitute mortality table may be used for a plan only if: (1) the plan has a sufficient number of plan participants and has been maintained for a sufficient period of time to have credible mortality information necessary to create a substitute mortality table; and (2) the table reflects the actual mortality experience of the plan’s participants and projected trends in general mortality experience. Except as provided by the Secretary, a plan sponsor may not use substitute mortality tables for any plan unless substitute mortality tables are established and used for each plan maintained by the plan sponsor or a member of its controlled group.

Final regulations (TD 9826) under section 430(h)(3) were published in the **Federal Register** on October 5, 2017 (82 FR 46388). The final regulations issued

¹ Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829 (1974), as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel

to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code would also apply for purposes of section 303 of ERISA.

in 2017 include rules regarding generally applicable mortality tables, which are set forth in § 1.430(h)(3)–1 (the 2017 general mortality table regulations), as well as rules regarding substitute mortality tables, which are set forth in § 1.430(h)(3)–2 (the 2017 substitute mortality table regulations). The 2017 substitute mortality table regulations provide that any substitute mortality tables must be based on the plan's mortality experience during an experience study period that consists of 2, 3, 4, or 5 consecutive 12-month periods. In conjunction with the 2017 substitute mortality table regulations, the Department of the Treasury (Treasury Department) and the IRS issued Rev. Proc. 2017–55, 2017–43 IRB 373, which sets forth the procedure by which a plan sponsor of a defined benefit plan may request and obtain approval for the use of plan-specific substitute mortality tables.

Beginning in 2020 and extending into 2023, for many pension plans, the mortality experience of the plan participants was significantly higher than expected due to the COVID–19 pandemic. The Treasury Department and the IRS are concerned that, if a plan sponsor applied for approval of plan-specific substitute mortality tables using an experience study period that reflects the actual mortality experience for the plan's population during those years, then the existing rules and procedures used for generating those tables would result in plan-specific substitute mortality tables that overstate the expected future mortality for the plan's population. This is because substitute mortality tables are constructed based on a mortality ratio calculated for the plan's population, which is determined by dividing the actual mortality experience for plan participants during the experience study period by the expected mortality under the generally applicable mortality tables. In the absence of any changes to the rules and procedures for generating plan-specific substitute mortality tables, a mortality ratio developed using an experience study period that includes the period in which the COVID–19 pandemic occurred (COVID–19 pandemic period) will likely be unusually high, as the numerator of the mortality ratio (the plan's actual experience) will reflect the actual number of deaths during this period, while the denominator of that ratio (the expected deaths for the plan population) will be based on the expected number of deaths from the generally applicable mortality tables (which reflect only a small fraction of the significant short-term increase in

mortality rates that occurred during the COVID–19 pandemic period).

The Treasury Department and the IRS are issuing final regulations updating the generally applicable mortality tables under section 430(h)(3)(A) (TD 9983) in the Rules and Regulations section of this issue of the **Federal Register**. Those final regulations adopt mortality tables that are based on the mortality tables in the Pri-2012 Private Retirement Plans Mortality Tables Report (Pri-2012),² which were developed using the mortality experience for private sector pension plans during the period from 2010 to 2014. In light of the fact that the Pri-2012 mortality tables did not reflect any mortality experience from the COVID–19 pandemic period, the preamble to the proposed regulations that preceded those final regulations asked for comments about whether the rules and procedures relating to development of substitute mortality tables should be modified to recognize the potential that the mortality experience for the COVID–19 pandemic period is not accurately predictive of the future mortality experience for participants of a plan for which substitute mortality tables are requested. In response, commenters suggested various solutions that included: (1) excluding mortality data from the COVID–19 pandemic period, (2) applying a reduced weight to the mortality data from the COVID–19 pandemic period in developing the substitute mortality tables, (3) extending the duration of the experience study period (which has a similar effect of reducing the weight of the mortality data for that period), and (4) computing the mortality ratio for a substitute mortality table by comparing pre-2020 data to the Pri-2012 base mortality table and post-2019 data to the Pri-2012 base mortality table (as projected) with a specified load.

Explanation of Provisions

These proposed regulations would generally retain the methodology for development of substitute mortality tables included in the 2017 substitute mortality table regulations but provide additional rules regarding the use of mortality experience data for the COVID–19 pandemic period. In order to develop a mortality ratio that is more accurately predictive of future mortality experience for a plan population, these proposed regulations would provide that the expected deaths for the plan

population used in determining the denominator in the mortality ratio are calculated by adjusting the mortality rates in the generally applicable mortality tables. Specifically, the proposed regulations would provide that, for each 12-month period that is included in the experience study period and that begins after 2019 and before 2024, the expected mortality rate for an individual is determined by multiplying the expected mortality rate for that individual from the standard mortality tables by an adjustment factor.³ The adjustment factor for each of these years would approximate the ratio (as reported by the National Center for Health Statistics, which is part of the Centers for Disease Control and Prevention)⁴ of (1) the actual number of deaths for the general population for the year to (2) the expected number of deaths for the general population for that year.

Applicability Date

The proposed regulations are proposed to apply for plan years beginning on or after January 1, 2025.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

Special Analyses

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small employers generally cannot use plan-specific substitute mortality tables because their defined benefit pension

² The Pri-2012 Report can be found at: <https://www.soa.org/49c106/globalassets/assets/files/resources/experience-studies/2019/pri-2012-mortality-tables-report.pdf>.

³ This approach is similar to the fourth approach suggested by commenters, as described in the Background section of this preamble because a direct adjustment to the expected mortality rates during the COVID–19 pandemic period would be more appropriate than calculating mortality ratios using an approach that either ignores the mortality experience during the COVID–19 pandemic period or reduces the weighting of that experience.

⁴ https://www.cdc.gov/nchs/nvss/vsr/covid19/excess_deaths.htm.

plans do not have credible mortality experience (which is defined as a minimum number of deaths during the experience study period) as is required to use substitute mortality tables. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not propose any rule that would include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Any comments submitted will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S. F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from Treasury and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.430(h)(3)–2 is amended by:

■ a. In paragraph (a) removing “§ 601.601(d)(2)(ii)(b)” and adding in its place “§ 601.601(d)”;

■ b. In paragraph (d)(2)(ii)(B) removing the text “January 1, 2019 year is” and adding in its place the text “January 1, 2019 is”;

■ c. Revising paragraph (d)(4)(iii)(A).

■ d. Redesignating paragraph (d)(4)(iii)(B) as paragraph (d)(4)(iii)(C) and adding a new paragraph (d)(4)(iii)(B).

■ e. Revising paragraph (g).

The additions and revisions read as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(A) *Projection of base table.* Except as otherwise provided in this paragraph (d)(4)(iii), the standard mortality table for a year is the mortality table determined by applying cumulative mortality improvement factors determined under § 1.430(h)(3)–1(b)(2)(ii) to the base mortality table under § 1.430(h)(3)–1(d) for the period beginning with the base year for that mortality table and ending in the base year for the base substitute mortality table determined under paragraph (c)(3)(ii) of this section. For purposes of the preceding sentence, the cumulative mortality improvement factors are determined using the mortality improvement rates described in

§ 1.430(h)(3)–1(b)(1)(iii) that apply for the calendar year during which the plan sponsor submits the request for approval to use substitute mortality tables.

(B) *Adjustments to standard mortality table for 2020, 2021, 2022, and 2023.* If a 12-month period in the experience study period begins after December 31, 2019, and before January 1, 2024, the probability of death for an individual under paragraph (d)(4)(ii)(A)(2)(i) of this section is determined as the mortality rate for the individual's age (at the beginning of the year) and gender from the standard mortality table determined under paragraph (d)(4)(iii) of this section multiplied by the adjustment factor in Table 1 for the calendar year that includes the first day of the 12-month period. For example, for an experience study period that begins April 1, 2019, and ends March 31, 2023, the probability of death for the year beginning April 1, 2022, for a male annuitant who is age 65 as of that date is the probability of death from the base mortality table (0.01087), multiplied by the cumulative mortality improvement factor for the period from 2012 to 2021 (1.02292) and by the adjustment factor for the 2022 calendar year of 1.10, resulting in a probability of death of 0.01223.

TABLE 1 TO PARAGRAPH (d)(4)(iii)(B)

Calendar year	Adjustment factor
2020	1.15
2021	1.15
2022	1.10
2023	1.05

* * * * *

(g) *Applicability date*—(1) *General rule.* This section applies for plan years beginning on or after January 1, 2025. Except as provided in paragraph (g)(2) of this section, the substitute mortality table used for a plan for such a plan year must comply with the rules of paragraphs (a) through (f) of this section.

(2) *Transition rule for previously approved substitute mortality tables.* If a plan sponsor has received approval from the Commissioner to use substitute mortality tables for a plan year beginning in 2025, then the plan's base substitute mortality tables that were approved are treated as satisfying the requirements of paragraph (d) or (e) of this section, as applicable.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–23268 Filed 10–19–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 45**

[Docket ID: DOD–2023–OS–0065]

RIN 0790–AL70

Medical Malpractice Claims by Members of the Uniformed Services**AGENCY:** Department of Defense Office of General Counsel, DoD.**ACTION:** Proposed rule with request for comments.

SUMMARY: The Department of Defense (DoD) proposes to amend the regulations governing medical malpractice claims by members of the uniformed services to adjust and update certain portions of the regulation related to calculation of damages. Currently, total potential damages are reduced by offsetting most of the compensation otherwise provided or expected to be provided by DoD or the Department of Veterans Affairs (VA) for the same harm that is the subject of the medical malpractice claim. The amendments would apply offsets to economic damages only. The amendments would also clarify when future lost wages may be awarded.

DATES: Comments will be accepted on or before December 19, 2023. The changes in the proposed rule would apply to claims received by DoD on or after the date the final rule is published in the **Federal Register** and to claims pending before DoD on that date.

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

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

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

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing 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: Melissa D. Walters, (703) 681–6027.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 2733a of title 10, United States Code, allows members of the uniformed services or their authorized representatives to file claims, and the Secretary of Defense to pay such claims, for personal injury or death caused by a DoD health care provider in a covered military medical treatment facility, as defined in that section. DoD published an interim final rule to establish uniform standards and procedures for adjudicating these claims on June 17, 2021 (86 FR 32194) and a final rule on August 26, 2022 (87 FR 52446).

II. Explanation of Changes With This Rule

The proposed amendments to 32 CFR 45.11 would apply offsets for payments made by the U.S. Government to economic damages only. Under the current version of 32 CFR 45.11, total potential damages are reduced by offsetting most of the compensation otherwise provided or expected to be provided by DoD or VA for the same harm that is the subject of the medical malpractice claim.

The amendments would also clarify that future lost wages may be awarded: (1) until the time DoD determines that the claimant is, or is expected to be, medically rehabilitated and able to resume employment; (2) in cases of permanent incapacitation, until expiration of the claimant's work-life expectancy; or (3) in cases of death, until the expiration of the claimant's work-life expectancy, after deducting for the claimant's personal consumption.

III. Section-by-Section Discussion

The following is a section-by-section overview of the amendments in this rulemaking.

Section 45.1—Purpose of this part. Proposed § 45.1(b) eliminates a reference to the total value of compensation the claimant is expected to receive under a comprehensive system of compensation for death or disability being subject to offset. Instead, it generally refers to § 45.11, which relates to offsets.

Section 45.9—Calculation of damages: economic damages. Proposed § 45.9(b)(4) changes “loss of earning capacity” to “future lost earnings” to parallel “past lost earnings” in § 45.9(b)(3). Proposed § 45.9(b)(4) includes a change to account for future lost earnings until the time DoD determines that the claimant is, or is expected to be, medically rehabilitated

and able to resume employment or, in cases of permanent incapacitation, until expiration of the claimant's work-life expectancy. Future lost earnings must be substantiated by appropriate documentation and claimants have an obligation to mitigate damages.

Proposed § 45.9(d) is added to indicate that an injury or condition does not result in lost earnings for purposes of this regulation if the lost earnings are the result of disability discrimination. Lost earnings stemming from disability discrimination may be settled and paid under other provisions of law and therefore are not compensable under this regulation.

For example, if a claimant suffers severe facial disfigurement as a result of medical malpractice but because a potential employer discriminates against that claimant for fear of negative reactions to the disfigurement, the claimant's redress for the inability to obtain employment would be under provisions of law relating to employment discrimination and not under 10 U.S.C. 2733a.

Section 45.10—Calculation of damages: non-economic damages. Proposed § 45.10(a) includes language currently in § 45.10(b) regarding proof of a claimant's non-economic damages that DoD may require. This amendment keeps information relating to the proof of non-economic damages together for clarity.

Proposed § 45.10(b) consolidates the description of the elements of non-economic damages into one paragraph. This eliminates confusion that might arise from separating conscious pain and suffering from disfigurement, as a single amount is awarded for all non-economic damages.

Section 45.10(c) removes the amount of the cap on non-economic damages from the regulatory text. This change eliminates the need for publication of conforming administrative amendments to the regulation each time updates to the cap amount are published via **Federal Register** notice.

Section 45.11—Calculation of damages: offsets for DoD and VA Government compensation. In the current version of the regulation, total potential damages calculated under this part, both economic and non-economic, are reduced by offsetting most of the compensation otherwise provided, or expected to be provided, by DoD or VA for the same harm that is the subject of the medical malpractice claim. Under the proposed amendments, offsets are applied to economic damages only.

Proposed § 45.11(a) states that total potential economic damages calculated under this part are reduced by offsetting

most of the compensation otherwise provided, or expected to be provided, by DoD or VA for the same harm that is the subject of the medical malpractice claim. This is a change from the current rule, which makes all offsets from the total potential economic and non-economic damages. Compensation received from DoD or VA that does not relate to the malpractice is still excluded from the offset. Under § 45.4(c), claimants have the burden of substantiating their claim by a preponderance of the evidence and, under §§ 45.9(a) and 45.10(a), the burden of proving the amount of damages by a preponderance of the evidence. This change makes it clear that DoD has the burden of establishing the applicability and amount of any offsets from the amount of damages otherwise payable to the claimant.

Proposed § 45.11(c), formerly § 45.11(d) in the current regulation, states that present value is used to calculate offsets against economic damages. This change is necessary with the proposed change to offset economic damages only. An award of future lost earnings and retirement benefits is reduced to present value, so the offsetting compensation for future lost earnings and retirement benefits must also be reduced to present value.

Proposed § 45.11(d) contains the same language as § 45.11(c) in the current regulation, with the addition of language from § 45.11(a) in the current regulation stating that claimants must provide information not available to DoD, but requested by DoD, for the purpose of determining offsets.

Proposed § 45.11(e) combines what is currently in §§ 45.11(e) through (g) in the current regulation. Proposed § 45.11(e) removes the reference to pay and allowances while a member remains on active duty, or in an active status, as an offset because the member receiving these pay and allowances has not lost earnings.

IV. Regulatory Analysis

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distribution of impacts; and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be a significant regulatory action, although not economically significant. Accordingly, it has been reviewed by the Office of Management and Budget as required by these Executive orders.

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601 et seq.)

The General Counsel of the Department of Defense certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require a regulatory flexibility analysis.

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

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

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

It has been determined that this proposed rule does not impose new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

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

Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the

distribution of power and responsibilities between the Federal Government and Indian tribes. This rulemaking will not have a substantial effect on Indian tribal governments.

V. Impact of This Regulation

a. Summary

The proposed amendments adjust and update certain portions of the regulation related to calculation of damages. The amendments would apply offsets to economic damages only. The amendments would also clarify when future lost wages may be awarded.

b. Affected Population

At the end of Fiscal Year 2022, there were approximately 1,410,000 Active Duty Service members, and 440,000 Reserve and National Guard members eligible for DoD healthcare benefits. These uniformed Service members will be able to file claims with DoD alleging malpractice from care at DoD military medical treatment facilities as defined in section 2733a.

c. Costs

DoD does not estimate that any additional claims will be filed as a result of the proposed amendments to the regulation. Since the enactment of section 2733a, individuals who believe they have been subjected to malpractice have filed claims involving injuries ranging from minor injuries to death, regardless of the potential application of offsets.

d. Transfers

Regardless of the number of claims in which malpractice occurred, the only claims in which damages will be awarded are those which exceed the offsets for any payment to be made. The proposed changes solely impact non-economic damages. No changes are proposed that would impact offsets from economic damages.

Based on claims adjudicated under this part in 2021 and 2022, four claims were adjudicated in which offsets were applied. The outcome would have been different in only one of these claims had the proposed amendments been in effect. In that one claim, \$200,000 of the potential non-economic damages was subject to offset. This \$200,000 would not have been offset from non-economic damages under the proposed changes.

Claims in 2021 and 2022 may not necessarily be representative of claims in future years. Claims were accepted beginning January 1, 2020, but could only begin to be adjudicated beginning on July 17, 2021, when the Interim Final Rule became effective. The first claims adjudicated under this new process

were claims that did not require a decision on the merits of whether malpractice occurred, such as claims that were denied because the alleged malpractice fell outside the statute of limitations in 10 U.S.C. 2733a(b)(4). Just as with claim resolution processes involving non-Service member claims, more complex claims, which tend to involve higher amounts of damages, require time for review. Since Service members' claims have only been able to be adjudicated since July 17, 2021, more complex claims may still be under adjudication, and the one claim that would have had a different outcome in 2021 and 2022 may not be representative of the number of claims that would be impacted going forward.

Taking the limited information into account, DoD estimates that the changes to the regulation would affect 2 claims per year, instead of basing its estimate on the one historical claim that would have been impacted. The average of the non-economic damages at issue in the four claims in which offsets were applied was \$337,500. Assuming \$337,500 additional would be paid in 2 claims, the estimated total cost to the government therefore would be \$675,000. Of this, the first \$100,000 of each of the two claims would be paid by DoD, with the remainder to be paid by the Treasury.

e. Benefits

The proposed changes to the regulation will allow some Service members to receive compensation for non-economic damages that they would not have been able to receive under the current regulation. The changes afford some Service members additional compensation in light of the non-economic harms they have experienced as a result of malpractice.

List of Subjects in 32 CFR Part 45

Medical, Malpractice, Claims, Uniformed Services.

Accordingly, the Department of Defense proposes to amend 32 CFR part 45 to read as follows:

PART 45—MEDICAL MALPRACTICE CLAIMS BY MEMBERS OF THE UNIFORMED SERVICES

■ 1. The Authority for part 45 continues to read as follows:

Authority: 10 U.S.C. 2733a.

■ 2. Amend § 45.1 by revising paragraph (b) to read as follows:

§ 45.1 Purpose of this part.

* * * * *

(b) *Relationship to military and veterans' compensation programs.*

Federal law provides a comprehensive system of compensation for military members and their families in cases of death or disability incurred in military service. This system applies to all causes of death or disability incurred in service, whether due to combat injuries, training mishaps, motor vehicle accidents, naturally occurring illnesses, or household events, with limited exceptions (*e.g.*, when the member is absent without leave or the injury is due to the member's intentional misconduct or willful negligence). This comprehensive compensation system applies to cases of personal injury or death caused by medical malpractice incurred in service as it does to all other causes. This part provides for the possibility of separate compensation in certain cases of medical malpractice but in no other type of case. A medical malpractice claim under this part will have no effect on any other compensation the member or the member's family is entitled to under the comprehensive compensation system applicable to all members. However, if the U.S. government makes a payment for harm caused by malpractice, this payment reduces the potential damages under this part as provided in § 45.11.

* * * * *

■ 3. Amend § 45.9 by revising paragraph (b)(4) and adding paragraph (d) to read as follows:

§ 45.9 Calculation of damages: economic damages.

* * * * *

(b) * * *

(4) Future lost earnings:

(i) Until DoD determines that the claimant is, or is expected to be, medically rehabilitated and able to resume employment;

(ii) In cases of permanent incapacitation, until expiration of the claimant's work-life expectancy; or

(iii) In cases of death, until the expiration of the claimant's work-life expectancy, after deducting for the claimant's personal consumption.

(iv) Future lost earnings must be substantiated by appropriate documentation and claimants have an obligation to mitigate damages.

(v) In addition, loss of retirement benefits is compensable and similarly discounted after appropriate deductions. Estimates for future lost earnings and retirement benefits must be discounted to present value.

* * * * *

(d) *Disability discrimination.* An injury or condition does not result in lost earnings for purposes of, and is not compensable under, this regulation if the lost earnings stem from disability

discrimination, which may be settled and paid under other provisions of law.

* * * * *

■ 4. Amend § 45.10 by revising paragraphs (a) through (c) to read as follows:

§ 45.10 Calculation of damages: non-economic damages.

(a) *In general.* Non-economic damages are one component of a potential damages award. The claimant has the burden of proof on the amount of non-economic damages by a preponderance of evidence. DoD may request an interview of or statement from the claimant or other person with primary knowledge of the claimant. DoD may also require medical statements documenting the claimant's condition and, in cases of disfigurement, photographs documenting the claimant's condition.

(b) *Elements of non-economic damages.* Non-economic damages include pain and suffering; physical discomfort; mental and emotional trauma or distress; loss of enjoyment of life; physical disfigurement resulting from an injury to a member that causes diminishment of beauty or symmetry of appearance rendering the member unsightly, misshapen, imperfect, or deformed; and the inability to perform daily activities that one performed prior to injury, such as recreational activities. Such damages are compensable as part of non-economic damages.

(c) *Cap on non-economic damages.* In any claim under this part, total non-economic damages may not exceed a cap amount published by DoD via a **Federal Register** notice. DoD will periodically publish updates to this cap amount via **Federal Register** notices, consistent with changes in prevailing amounts in the majority of the States with non-economic damages caps.

* * * * *

■ 5. Amend § 45.11 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraph (c) and (d) as paragraphs (d) and (c), respectively;

■ c. Revising the first sentence in the newly redesignated paragraph (c);

■ d. Adding a sentence to the end of the newly redesignated paragraph (d);

■ e. Revising paragraph (e); and

■ f. Removing paragraphs (f) and (g).

The revisions and additions read as follows:

§ 45.11 Calculation of damages: offsets for DoD and VA Government compensation.

(a) *In general.* Total potential economic damages calculated under this part are reduced by offsetting most of the compensation otherwise provided or expected to be provided by DoD or VA

for the same harm that is the subject of the medical malpractice claim. DoD has the burden to establish the applicability and amount of any offsets.

* * * * *

(c) *Present value of future payments and benefits.* In determining offsets under this section from economic damages, DoD will use the present value of future payments and benefits. * * *

(d) *Information considered.* * * * Claimants must provide information not available to DoD, but requested by DoD, for the purpose of determining offsets.

(e) *Benefits and payments that may be considered as potential offsets.* The general rule is that potential damages calculated under this part may be offset only by DoD or VA payments and benefits that are primarily funded by Government appropriations. Potential damages calculated under this part are not offset by U.S. Government payments and benefits that are substantially funded by the military member. The following examples are provided for illustrative purposes only, are not all-inclusive, and are subject to adjustment as appropriate.

(1) The following DoD and VA payments and benefits are primarily funded from Government appropriations and will be offset:

(i) Disability retired pay in the case of retirement due to the disability caused by the alleged medical malpractice.

(ii) Disability severance pay in the case of non-retirement disability separation caused by the alleged medical malpractice.

(iii) Incapacitation pay.

(iv) Involuntary and voluntary separation pays and incentives.

(v) Death gratuity.

(vi) Housing allowance continuation.

(vii) Survivor Benefit Plan.

(viii) VA disability compensation, to include Special Monthly Compensation, attributable to the disability resulting from the malpractice.

(ix) VA Dependency and Indemnity Compensation, attributable to the disability resulting from the malpractice.

(x) Special Survivor Indemnity Allowance.

(xi) Special Compensation for Assistance with Activities of Daily Living.

(xii) Program of Comprehensive Assistance for Family Caregivers.

(xiii) Fry Scholarship.

(xiv) TRICARE coverage, including TRICARE-for-Life, for a disability retiree, family, or survivors. Future TRICARE coverage is part of the Government's compensation package for a disability retiree or survivor.

(2) The following U.S. Government payments and benefits are substantially funded by the military members or are otherwise generally not eligible for consideration as potential offsets:

(i) Servicemembers Group Life Insurance.

(ii) Traumatic Servicemembers Group Life Insurance.

(iii) Social Security disability benefits.

(iv) Social Security survivor benefits.

(v) Prior Government contributions to a Thrift Savings Plan.

(vi) Commissary, exchange, and morale, welfare, and recreation facility access.

(vii) Value of legal assistance and other services provided by DoD.

(viii) Medical care provided while in active service or in an active status prior to death, retirement, or separation.

Dated: October 12, 2023.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2023–23013 Filed 10–19–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0652]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, at Jupiter, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Indiantown Road Bridge across the Atlantic Intracoastal Waterway (AICW), mile 1006.2, at Jupiter, Florida. This action is necessary to alleviate vehicle traffic congestion on the Indiantown Road Bridge caused by the replacement and closure of a nearby bridge. Once construction of the nearby bridge has been completed, the Indiantown Road Drawbridge will return to normally scheduled operations. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before November 20, 2023.

The Coast Guard anticipates that this proposed rule will be effective from 12:01 a.m. on December 30, 2023, through 11:59 p.m. on August 31, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0652 using Federal Decision Making Portal at <https://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Leonard Newsom, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6946, email Leonard.D.Newsom@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FL Florida
AICW Atlantic Intracoastal Waterway
FDOT Florida Department of Transportation

II. Background, Purpose and Legal Basis

Indiantown Road Bridge across the Atlantic Intracoastal Waterway (AICW), mile 1006.2, at Jupiter, Florida, is a double-leaf bascule bridge with 35 feet of vertical clearance in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.261(q). Navigation on the waterway consists of recreational and commercial mariners.

The bridge owner, Florida Department of Transportation (FDOT), requested the Coast Guard consider allowing this change during the replacement and closure of a nearby bridge. The closing of the nearby bridge has resulted in significant increase in vehicle traffic congestion of the area. The only alternate route for land traffic to access the mainland is via the Donald Ross Bridge approximately 4.5 miles south of the Indiantown Road Bridge. This proposed temporary rule will reduce the number of drawbridge openings which will subsequently allow local vehicle traffic to flow with reduced obstructions and delays.

III. Discussion of Proposed Rule

The proposed temporary rule will allow the drawbridge to remain closed to navigation during weekday vehicle commuting hours. Under this proposed temporary rule, the drawbridge would remain closed to vessel traffic daily

from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. At all other times the bridge would open on the hour and half hour. Vessels that can pass beneath the bridge without an opening may do so at any time.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that vessels can still transit the bridge at designated times throughout the day, and vessels that can transit under the bridge without an opening may do so at any time. This proposed temporary rule will further meet the reasonable needs of navigation while taking into consideration the reasonable needs of vehicular traffic.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity

and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

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

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0652 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Stay § 117.261(q) from 12:01 a.m. on December 30, 2023, through 11:59 p.m. on August 31, 2025.

■ 3. Add temporary § 117.261(p) from 12:01 a.m. on December 30, 2023, through 11:59 p.m. on August 31, 2025, to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(p) Indiantown Road Bridge, mile 1006.2, at Jupiter. The draw shall open on the hour and half hour except that the draw need not open daily from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.

* * * * *

Dated: October 13, 2023.

Douglas M. Schofield,

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

[FR Doc. 2023–23259 Filed 10–19–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–336; RM–11967; DA 23–936; FR ID 177970]

Television Broadcasting Services Wittenberg and Shawano, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division, Media Bureau (Bureau) has before it a petition for rulemaking filed by TV–49, Inc. (Petitioner or TV–49), the permittee of an unbuilt television station on channel 31 allotted to Wittenberg, Wisconsin. TV–49 requests an amendment of the Table of TV Allotments to delete channel 31 at Wittenberg and substitute channel 31 at Shawano, Wisconsin, consistent with the technical parameters set forth in the Petition, as amended. The Petitioner further requests modification of its construction permit to specify Shawano as its community of license.

DATES: Comments must be filed on or before November 20, 2023 and reply comments on or before December 4, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Matthew S. Delnero, Esq., Covington & Burling, LLP, 850 Tenth Street NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission has stated that it will apply the modification procedure in section 1.420(i) of the rules, which provides that the Commission may, in connection with a rulemaking proceeding to amend the Table of TV Allotments, modify a station’s license or construction permit to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest, where the new allotment will be mutually exclusive

with a station’s existing allotment. The Technical Exhibit submitted with the Amended Petition demonstrates that the proposed allotment of channel 31 at Shawano is mutually exclusive with the current allotment at Wittenberg, and is otherwise in compliance with all of our technical rules. The Petitioner also emphasizes that Wittenberg will not lose any existing service because as a permittee, TV–49 has not commenced operations in Wittenberg, and thus no viewers have come to rely on any existing service, a factor the Commission has found to be mitigating in the context of whether it would remove the sole channel allotted to a community. Moreover, the Petitioner states that the communities are only thirty miles apart and Wittenberg will still be within the noise limited contour of the channel 31 facility constructed at Shawano. The Petitioner further asserts that providing Shawano, the county seat of Shawano County and a community that is nine times larger than Wittenberg, with its first local television service is the type of rare circumstance which justifies a waiver of the general prohibition on the removal of a community’s sole first local service. According to the Petitioner, Shawano’s Census 2020 population is 9,243 people, while Wittenberg’s Census 2020 population is 1,015. Shawano is governed by a mayor and six alderpersons, who collectively comprise its Common Council. The Shawano school district operates five public schools, there are also three religiously-affiliated private schools in Shawano, and Northeast Wisconsin Technical College also operates a Regional Learning Campus in Shawano. Shawano also provides a number of municipal services through the Shawano-Bonduel Municipal Court, the Shawano Department of Public Works, the Shawano Police Department, and the Shawano Municipal Utilities. Petitioner states that given the foregoing, it is clear that Shawano has the population and public services indicative of a community deserving of its own television station. Moreover, the Petitioner asserts that six licensed full power television stations currently provide noise-limited service to all of Wittenberg and the Petitioner demonstrates that once the Station commences operations it will also provide noise-limited service to Wittenberg.

This is a synopsis of the Commission’s *Notice of Proposed Rulemaking*, MB Docket No. 23–336; RM–11967; DA 23–936, adopted October 6, 2023, and released October 6,

2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in section 1.1204(a)

of the Commission’s rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission’s rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.
Thomas Horan,
Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under Wisconsin, add an entry for “Shawano” in alphabetical order, and revise the entry for “Wittenberg” to read as follows:

§ 73.622 Digital television table of allotments.

*	*	*	*	*
(j) * * *				
Community			Channel No.	
*	*	*	*	*
Wisconsin				
*	*	*	*	*
Shawano				31
*	*	*	*	*
Wittenberg .....			.....	
*	*	*	*	*

[FR Doc. 2023–22861 Filed 10–19–23; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 88, No. 202

Friday, October 20, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Employment and Training Opportunities in the Supplemental Nutrition Assistance Program

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection. This information collection includes the requirement for case management services to individuals participating in Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) program as mandated by the Food and Nutrition Act of 2008 (FNA), as amended. The current information collection also includes four other provisions of the FNA and SNAP regulations that are being merged into other existing information collections. Those provisions include State agencies notifying individuals who have been determined ill-suited by an E&T provider for a particular E&T component; State agency notification to inform Able-bodied Adults without Dependents (ABAWD) about work requirements and the ABAWD time limit through a written notice and oral explanation; the requirement that State agencies inform SNAP households not otherwise exempt from the general work requirements in writing of available employment and training services at the time of recertification if these individuals are members of households that contain at least one adult, with no elderly or disabled individuals, and with no earned income at the their last recertification or required report; and

the addition of four data elements to the FNS-583 reports (SNAP Employment and Training Program Activity Report).

DATES: Written comments must be received on or before December 19, 2023.

ADDRESSES: Comments may be sent to: Marcie Foster, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via email to rachel.gragg@usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Rachel Gragg at 703-605-3213.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Employment and Training Opportunities in the Supplemental Nutrition Assistance Program.

Form Number: N/A.

OMB Control Number: 0584-0653.

Expiration Date: 03/31/2024.

Type of Request: Revision of a currently approved collection.

Abstract: Section 6(d)(4)(B)(i) of the Food and Nutrition Act of 2008 (FNA), as amended, and Supplemental Nutrition Assistance Program (SNAP)

regulations at 7 CFR 273.7(e)(1) requires State agencies to provide case management services, such as comprehensive intake assessments, individualized service plans, progress monitoring or coordination with service providers to all SNAP Employment and Training (E&T) participants. The purpose of the case management services is to guide E&T participants towards appropriate E&T components and activities based on the participant's needs and interests, support the participant in the E&T program and to provide activities and resources that will assist the participant toward self-sufficiency. State agencies may adopt different modes for the delivery of case management services, such as virtual, over the telephone, in-person or hybrid approach. This information will be used to better administer the SNAP E&T Program and provide improved customer service to SNAP E&T participants. If the Department does not require State agencies to conduct case management services, the Department will be out of compliance with Federal law.

Discussed in the Employment and Training Opportunities in the Supplemental Nutrition Assistance Program Final rule was the intent to merge certain reporting burdens to OMB Controls #0584-0064 and #0584-0594.

Merging OMB-Approved Burden from OMB Control Number 0584-0653 to OMB Control Number 0584-0064: Three provisions included in the current information collection for the Employment and Training Opportunities in SNAP are being merged into the OMB-Approved burden for the SNAP Forms: Applications, Periodic Reporting, Notices (OMB Control Number 0584-0064, expiration date: 02/28/24. Those provisions include the requirement under 7 CFR 273.7(c)(18)(i) for notifying E&T participants of provider determinations; requirement under 7 CFR 273.24(b)(8) regarding informing Able-bodied Adults without Dependents (ABAWDs) of the ABAWD work requirements and time limits; and the requirement under 7 CFR 273.7(b)(5) for informing certain households of employment and training services.

Merging OMB-Approved Burden for the FNS-583 from OMB Control Number 0584-0653 to OMB Control Number 0584-0594: The requirement under 7

CFR 273.7(c)(11) regarding four additional data elements in the FNS–583 reports (SNAP Employment and Training Program Activity Report) was merged into the OMB-Approved burden for the Food Program and Reporting System (OMB Control Number 0584–0594, expiration date 07/31/23 currently under review).

The following is the estimated burden for State agencies to provide, record and maintain records in State E&T management information systems (MIS) on the provision of case management services and individuals receiving case management services.

FNS is seeking an overall burden of 375,053 respondents (53 States + 375,000 Individuals/Households); 5,325,568.45 total annual responses (2,662,508.00 State reporting + 1,331,254 Individuals/Households reporting + 1,331,254 States recordkeeping; and 1,424,613.04 total annual burden hours (711,555.26 States reporting + 533,431.88 Individuals/Households reporting + 186,375.56) see breakout in the table below.

Reporting

Affected Public: State, Local and Tribal Government. Respondent groups identified include State agencies administering the SNAP E&T program in 50 States, the District of Columbia, Guam, and the U.S. Virgin Islands.

Estimated Number of Respondents: The total estimated number of respondents annually for the reporting burden of case management services is 53 State agencies representing the agencies responsible for SNAP E&T administration in 50 States, the District of Columbia, Guam and the U.S. Virgin Islands.

Estimated Number of Responses per Respondent: The total estimated number of responses per respondent for the provision and documenting of case management services is 50,236.

Based upon an average participation in E&T between FY 2016 to FY 2021, it

is estimated that an average of 375,000 individuals participates in SNAP E&T annually divided by 53 State agencies equals an annual average of 7,075.47 E&T participants per State agency.

Individuals participate in E&T programs an average of 3.55 months.

Estimated number of provisions of case management services per each State agency: 7,075.47 E&T participants $\times$ 3.55 months = 25,117.92.

Estimated number of documentations of case management services per each State agency: 7,075.47 E&T participants $\times$ 3.55 months = 25,117.92.

Estimated Total Annual Responses: The total estimated annual responses for the provision and documenting of case management services is 2,662,508.

Estimated number of provisions of case management services per each State agency: 7,075.47 E&T participants $\times$ 3.55 months = 25,117.92.

Total annual responses of provisions of case management services: 25,117.92 $\times$ 53 State agencies = 1,331,249.76.

Estimated number for documentations of case management services per each State agency: 7,075.47 E&T participants $\times$ 3.55 months = 25,117.92.

Total annual responses for documentations of case management services: 25,117.92 $\times$ 53 State agencies = 1,331,249.76.

Estimated Time per Response: The estimated hours per response is .27.

Estimated time for initial case management meeting is .5 hours and each subsequent meeting is .25 hours, for an average of 0.3007 hours per meeting $[(0.5 \text{ hours} + .25 \text{ hours} + .25 \text{ hours} + 0.0676 \text{ hours})/3.55 \text{ months} = 0.3007]$.

Estimated time for case manager to prepare for each case management session is an average of 0.1538 hours per meeting.

Total time for provision of case management is .4545 $(0.3007 + 0.1538 = 0.4545)$.

Estimated Total Annual Burden on Respondents: The estimated total

annual burden on State agencies to provide and document case management services is 711,555.26.

Affected Public: Individual/Household. Respondent group includes SNAP participants referred to SNAP E&T receiving case management services.

Estimated Number of Respondents: The estimated number of respondents is 375,000 individuals participating in SNAP E&T and receive case management services. Based upon an average participation in E&T between FY 2016 to FY 2021.

Estimated Number of Responses per Respondent: The estimated number of responses per respondent is 3.55001067. This represents the average number of months that E&T participants participate and receive case management services.

Estimated Total Annual Responses: The estimated total annual responses is 1,331,254.

375,000 E&T participants receiving case management services for 3.55 months $(375,000 \times 3.55 = 1,331,254.)$

Estimated Time per Response: The estimated time per response is .4007 hours.

Average meeting time for each case management meeting is .3007 hours.

It is assumed that 90 percent of the case management meetings will be held telephonically or virtually with only 10 percent held in-person and consequently requiring the participant to travel to an E&T site adding one hour to the average meeting time. For this reason, the average meeting time per participant is 0.4007 hours per meeting $[(0.3007 \times 0.90) + [1.3007 \times .10] = 0.4007]$.

Estimated Total Annual Burden on Respondents: The estimated total annual burden on respondents is 533,431.88 hours.

See the table below for estimated total annual reporting burden for each type of respondent.

TOTAL ANNUAL REPORTING BURDEN—SNAP EMPLOYMENT AND TRAINING PROVISION AND RECORDING OF CASE MANAGEMENT SERVICES

Respondent category (affected public)	Type of respondents	Burden activity	CFR citation	Estimated number of respondents	Responses per respondent (col. G/E)	Total annual responses (col. E $\times$ F)	Estimated hours per response (col. I/G)	Estimated total burden hours (col. G $\times$ H)
A	B	C	D	E	F	G	H	I
REPORTING								
State Government ..	State Agency E&T Case Managers.	Provide Case Management Services.	7 CFR 273.7(e)(1)	53.00	25,118.00	1,331,254.00	0.45	605,054.94
		Document Case Management Services.	7 CFR 273.7(e)(1)	53.00	25,118.00	1,331,254.00	0.08	106,500.32
	State Agency Eligibility Worker.	Notify E&T Participants of Provider Determination.	7 CFR 273.7(c)(18)(i).	0.00	0.00	0.00	0.00	0.00

TOTAL ANNUAL REPORTING BURDEN—SNAP EMPLOYMENT AND TRAINING PROVISION AND RECORDING OF CASE MANAGEMENT SERVICES—Continued

Respondent category (affected public)	Type of respondents	Burden activity	CFR citation	Estimated number of respondents	Responses per respondent (col. G/E)	Total annual responses (col. E × F)	Estimated hours per response (col. I/G)	Estimated total burden hours (col. G × H)
A	B	C	D	E	F	G	H	I
	State Agency Administrative Staff.	Inform ABAWDs of the ABAWD work requirement.	7 CFR 273.7(c)(1)(ii)–(iii); and 273.24(b)(8).	0.00	0.00	0.00	0.00	0.00
		Develop list of Employment and Training Services.	7 CFR 273.14(b)(5)	0.00	0.00	0.00	0.00	0.00
		Develop ABAWD written statement of work requirements.	7 CFR 273.7(c)(1)(iii).	0.00	0.00	0.00	0.00	0.00
		Reporting FNS–583 data elements (OMB Control #0584–0594).	7 CFR 273.7(c)(11)	0.00	0.00	0.00	0.00	0.00
		Reporting additional FNS–583 data elements.	7 CFR 273.7(c)(11)	0.00	0.00	0.00	0.00	0.00
State Government Sub-Total				53.00	50,236.00	2,662,508.00	0.27	711,555.26
Individuals/Household.	E&T Participants	Participating in Case Management Services.	7 CFR 273.7(e)(1)	375,000.00	3.55	1,331,254.00	0.40	533,433.48
		Review Information on Provider Determination.	7 CFR 273.7(c)(18)(i).	0.00	0.00	0.00	0.00	0.00
		Read ABAWD written statement of work requirements.	7 CFR 273.7(c)(1)(iii) and 273.24(b)(8).	0.00	0.00	0.00	0.00	0.00
		Read list of Employment and Training Services.	7 CFR 273.14(b)(5)	0.00	0.00	0.00	0.00	0.00
Individuals/Household Sub-Total				375,000.00	3.55	1,331,254.00	0.40	533,433.48
Grand Total Reporting Burden				375,053.00	10.65	3,993,762.00	0.31	1,244,988.74

Recordkeeping

Affected Public: State, Local and Tribal Government. Respondent groups identified include State agencies administering the SNAP E&T program in 50 States, the District of Columbia, Guam, and the U.S. Virgin Islands.

Estimated Number of Respondents: The total estimated number of respondents annually for the recordkeeping burden for maintaining records of case management services is

53 State agencies, including the agencies responsible for SNAP E&T administration in 50 States, the District of Columbia, Guam and the U.S. Virgin Islands.

Estimated Number of Responses per Respondent: The total estimated number of responses per respondent for the provision and documenting of case management services is 25,118.

Estimated Total Annual Responses: The total estimated annual responses for

the provision and documenting of case management services is 1,331,254.

Estimated Time per Response: The estimated time per response is .14 hours.

Estimated Total Annual Burden on Respondents: The estimated total annual burden on respondents is 186,375.56 hours.

See table below for estimated total burden for each type of respondent.

TOTAL ANNUAL RECORDKEEPING BURDEN—SNAP EMPLOYMENT AND TRAINING MAINTAINING RECORDS OF CASE MANAGEMENT SERVICES

Respondent category (affected public)	Type of respondents	Burden activity	CFR citation	Estimated number of respondents	Responses per respondent (col. G/E)	Total annual responses (col. E × F)	Estimated hours per response (col. I/G)	Estimated total burden hours (col. G × H)
A	B	C	D	E	F	G	H	I
RECORDKEEPING								
State Government	State Agency	Maintain Case Management Records.	273.7(e)(1)	53.00	25,118.00	1,331,254.00	0.14	186,375.56
Grand Total Recordkeeping Burden				53.00	25,118.00	1,331,254.00	0.14	186,375.56

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023-23238 Filed 10-19-23; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS-23-TELECOM-0015]

Notice of an Extension to an Existing Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Utilities Service's (RUS or Agency), an agency within the United States Department of Agriculture, Rural Development, intention to request an extension to an existing information collection package for the Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers. The Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, and the Rural eConnectivity Program (hereinafter collectively referred to as the "RUS Telecommunications Programs") provide loan funding to build and expand broadband and telecommunications services in rural communities.

DATES: Comments on this notice must be received by December 19, 2023 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Pamela Bennett, Regulations Management Division, Innovation Center, U.S. Department of Agriculture. Email: pamela.bennett@usda.gov. Telephone: (202) 720-9639.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS will submit to OMB for regular approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical

utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to <https://www.regulations.gov> and, in the "Search" box, type in the Docket No. RUS-23-TELECOM-0015. A link to the Notice will appear. You may submit a comment here by selecting the "Comment" button or you can access the "Docket" tab, select the "Notice," and go to the "Browse & Comment on Documents" Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the "Comment" button, complete the required information, and select the "Submit Comment" button at the bottom. Information on using [Regulations.gov](https://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "FAQ" link at the bottom.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, failure to provide data could result in program benefits being withheld or denied.

Title: Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers.

OMB Control Number: 0572-0153.

Type of Request: Extension to an existing information collection.

Abstract: The RUS Telecommunications Programs currently take servicing actions on approximately 10-12 projects each year. These actions are taken in accordance with 7 CFR part 1752 which outlines the general policies and procedures for servicing actions associated with the RUS Telecommunications Programs Borrowers in financial distress. The

reporting burden covered by this collection from the borrower may include but is not limited to, a request and explanation for servicing action, various financial, subscriber, and organizational information, as well as other documents and information that may be relevant as determined by RUS. The collection of this information will help the Agency streamline and expedite servicing actions, improve the Government's recovery on such loans, and improve overall customer service. Since most RUS Telecommunications Program borrowers are utilities, faster resolution of servicing actions will ensure that rural Americans continue to receive service.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 5 hours per response.

Respondents: Respondents for this data may include not-for-profit institutions; businesses or other for-profit.

Estimated Number of Respondents: 5.
Estimated Number of Responses per Respondent: 27.4.

Estimated Number of Responses: 137.
Estimated Total Annual Burden on Respondents: 694.50 hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center, Regulations Management Division, at (202) 720-9639. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2023-23243 Filed 10-19-23; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No.: RUS-23-TELECOM-0014]

60-Day Notice of Proposed Information Collection: Lien Accommodation and Subordination Policy; OMB Control No.: 0572-0126

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Utilities Service (RUS) announces its' intention to request a revision of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by December 19, 2023 to be assured of consideration.

ADDRESSES: Comments may be submitted by the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search Field" box, labeled "Search for dockets and documents on agency actions," enter the following docket number: (RUS-23-TELECOM-0014), and click "Search." To submit public comments, select the "Comment" button. Before inputting your comments, you may also review the "Commenter's Checklist" (optional). Insert your comments under the "Comment" title, click "Browse" to attach files (if applicable). Input your email address and select an identity category then click "Submit Comment." Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "FAQ" link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250-1522. Telephone: (202) 720-7853. Email: MaryPat.Daskla@usda.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension.

Title: 7 CFR part 1744, subpart B, Lien Accommodations and Subordination Policy.

OMB Control Number: 0572-0126.

Expiration Date of Approval: February 29, 2024.

Type of Request: Revision of a currently approved information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average .5 hours per response.

Respondents: Businesses or other for-profits.

Estimated Number of Respondents: 12.

Estimated Number of Responses: 36.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 18.

Abstract: RUS borrowers and other organizations providing telecommunications in rural areas, due to changes in the telecommunications industry, including deregulation and technological developments, may consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), the services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders. To facilitate the financing of those projects and services, this program assists in facilitating funding from non-RUS sources in order to meet the growing capital needs of rural Local Exchange Carriers (LECs).

The information collected for lien accommodation requests is used by RUS to ascertain a borrower's level of financial strength and, upon agency approval of the lien accommodation, ensures that the government's loan security interest is protected.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent by the Federal eRulemaking Portal: Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

Copies of this information collection can be obtained from Kimble Brown, Innovation Center—Regulations Team, at (202) 720-6780, or email: kimble.brown@usda.gov.

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

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2023-23160 Filed 10-19-23; 8:45 am]

BILLING CODE 3410-XV-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 12 p.m. ET on Thursday, November 9, 2023. The purpose of this meeting is to discuss post-report activities for their project on Legal Financial Obligations as well as civil rights topics for the Committee's next study.

DATES: Thursday, November 9, 2023, from 12 p.m.–1:30 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): <https://www.zoomgov.com/j/1611585968>.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 161 158 5968.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515-0204.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the

comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion on Post-Report Activities
- III. Committee Discussion & Vote on a New Civil Rights Topic
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: October 17, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-23175 Filed 10-19-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request American Community Survey and Puerto Rico Community Survey

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed revision of the American Community Survey and

Puerto Rico Community Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 19, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to aco.pra@census.gov. Please reference the American Community Survey and the Puerto Rico Community Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2023-0009, to the Federal e-Rulemaking Portal: <https://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <https://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Dameka Reese, U.S. Census Bureau, American Community Survey Office, 301-763-3804, dameka.m.reese@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Since its founding, the U.S. Census Bureau has balanced the demands of a growing country requiring information about its people and economy with concerns for respondents' confidentiality and the time and effort it takes respondents to answer questions. Beginning with the 1810 Census, Congress updated the set of questions asked in the 1790 and 1800 Censuses by adding questions to support a range of public concerns and uses. Over the course of a century, Federal agencies requested to add questions about agriculture, industry, and commerce, as well as individuals' occupation, ancestry, marital status, disabilities, place of birth, and other topics. In 1940, the Census Bureau introduced the long-form census questionnaire in order to ask more detailed questions to a sample of the public.

In the early 1990s, the demand for current, nationally consistent data from a wide variety of users led Federal Government policymakers to consider the feasibility of collecting social, economic, and housing data continuously throughout the decade. The benefits of providing current data, along with the anticipated decennial census benefits in cost savings, planning, improved census coverage, and more efficient operations, led the Census Bureau to plan the implementation of the Continuous Measurement Survey, later called the American Community Survey (ACS). After years of testing, the ACS was implemented in 2005 replacing the need for long-form data collection in future decennial censuses. The ACS is conducted throughout the United States and in Puerto Rico, where it is called the Puerto Rico Community Survey (PRCS). The ACS samples approximately 3.5 million housing unit addresses in the United States and about 36,000 housing unit addresses in Puerto Rico each year. A housing unit is a house, an apartment, a mobile home, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters. The ACS also collects detailed socioeconomic data from a sample of about 170,000 residents living in group quarters facilities in the United States and about 900 in Puerto Rico. Group quarters are places where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. People living in group quarters usually are not related to each other. Group quarters include such places as college/university student housing, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, workers' group living quarters and Job Corps centers, and emergency and transitional shelters.

The proposed content for the 2025 ACS and PRCS reflects changes to content and instructions that were recommended as a result of the 2022 Content Test. The Census Bureau periodically conducts tests of new and revised survey content to ensure the ACS and the PRCS are meeting the data needs of its stakeholders. The primary objective of content tests is to determine whether changes to question wording, instructions, response categories, and underlying constructs improve the quality of the data collected. The 2025 survey changes cover several topics: household roster, educational attainment, health insurance coverage,

disability, and labor force questions. Additionally, three new questions are proposed to be added to the ACS and the PRCS on solar panels, electric vehicles, and sewage disposal. A summary of changes for each topic are as follows:

Household Roster—The roster instructions have not changed since the 1990s while household living arrangements have increased in complexity. The revisions to the instructions help improve within household coverage, especially among young children and tenuously attached residents.

Educational Attainment—A relatively high percentage of adults are selecting the response category, “No schooling completed.” Ongoing research suggests that this includes adults who have completed some level of schooling. The revision reduces erroneous reports in this category through formatting and wording changes to clarify the response options.

Health Insurance Coverage—Since implementation in 2008, research has found that Medicaid and other means-tested programs are underreported in the ACS and the PRCS and that direct-purchase coverage is overreported, in part due to misreporting of non-comprehensive health plans and reporting multiple coverage types for the same plan (Mach & O’Hara, 2011; Lynch et al., 2011; Boudreaux et al., 2014; O’Hara, 2010; Boudreaux et al., 2011; Boudreaux et al., 2013). Moreover, revisions to the health insurance coverage question would help capture changes to the health insurance landscape that occurred with and since the passage of the Patient Protection and Affordable Care Act. Changes to the health insurance coverage question include a change in formatting of the question that adds an explicit response category for those who are uninsured, reordering some response options and rewording response options for direct purchase, Medicaid, employer, and veteran’s health care.

Disability—The series of six disability questions are being revised to capture information on functioning in a manner that reflects advances in the measurement of disability and is conceptually consistent with the World Health Organization’s International Classification of Functioning, Disability, and Health (ICF) disability framework (World Health Organization, 2001). Changes include using graded response categories to reflect the continuum of functional abilities (the current questions use a dichotomous yes or no response), reordering the questions, and modifying question text. Additionally, a

new question will ask about difficulties related to psychosocial and cognitive disability in addition to problems with speech.

Labor Force—Labor force questions related to when the person last worked, the number of weeks, and the number of hours worked are being updated to clarify instructions to only include work for pay, to include all jobs a person may hold, and to ensure that military service is included.

Electric Vehicles—This new question asks if there are plug-in electric vehicles kept at the housing unit. By adding this question, we will be able to provide data to stakeholders to project future energy sources, infrastructure, and consumer needs for the growing popularity of electric vehicles. The ACS and the PRCS would be the only data source at the housing unit level to adequately inform these projections.

Solar Panels—This new question asks if the housing unit uses solar panels that generate electricity. By adding this question, we will be able to obtain data for operational solar panels on a housing unit level across the country. This information will help the Energy Information Administration (EIA) match energy consumption to energy production across the United States.

Sewage Disposal—This new question asks if the housing unit is connected to a public sewer, septic tank, or other type of sewage system. By adding this question, we will be able to obtain consistent data on the decentralized wastewater infrastructure status in rural and other communities. These data are needed to protect public health, water quality, and to understand and meet the country’s growing infrastructure needs. The ACS and the PRCS are the only available surveys that can provide these levels of data in a timely, consistent, and standardized manner.

II. Method of Collection

To encourage self-response in the ACS, the Census Bureau sends up to five mailings to housing unit addresses selected to be in the sample. The first mailing, sent to all mailable addresses in the sample, includes an invitation to participate in the ACS online and states that a paper questionnaire will be sent in a few weeks to those unable to respond online. The second mailing is a letter that reminds respondents to complete the survey online, thanks them if they have already done so, and informs them that a paper questionnaire will be sent at a later date if we do not receive their response. In a third mailing, the paper questionnaire is sent only to those sample addresses that have not completed the online

questionnaire within two weeks of receipt of the first mailing. The fourth mailing is a postcard that reminds respondents to respond and informs them that an interviewer may contact them if they do not complete the survey. A fifth mailing is sent to respondents who have not completed the survey within five weeks. This letter provides a due date and reminds the respondents to return their questionnaires to be removed from future contact. If a respondent starts to answer the survey online and provides an email address but does not complete the survey, an email will be sent to the respondent to remind them to return to the survey to complete their online questionnaire. If the Census Bureau does not receive a response or if the household refuses to participate, the address may be selected for an interview in-person or by telephone by a Census Bureau field representative, which we call the nonresponse follow-up data collection operation. Respondents also have the option to call the Telephone Questionnaire Assistance line and complete the survey over the telephone. A small sample of respondents from the nonresponse follow-up data collection operation are recontacted for quality assurance purposes.

A sixth mailing, sent to all mailable addresses selected for an interview in-person, includes an invitation to participate in the ACS online and reminds the respondents to complete the survey online to avoid an in-person interview. Some addresses are deemed unavailable because the address is incomplete or directs mail only to a post office box. The Census Bureau currently collects data for these housing units using both online and computer-assisted personal interviewing by a Census Bureau field representative. During the person-level phase, a field representative uses a computer-assisted personal interview automated instrument to collect detailed information for each sampled resident. A small sample of respondents from the nonresponse follow-up data collection operation are recontacted for quality assurance purposes.

For sample housing units in the PRCS, a different mail strategy is employed. The Census Bureau continues to use the previously used mail strategy with no references to an internet response option. The Census Bureau sends up to five mailings to a Puerto Rico address selected to be in the sample. The first mailing includes a prenotice letter. The second and fourth mailings include the paper survey. The third and fifth mailings are postcards that serve as a reminder to respond to

the survey. If the Puerto Rico address is deemed unmailable because the address is incomplete or directs mail only to a post office box, the address may be selected for an interview in-person or by telephone. A small sample of respondents from the nonresponse follow-up data collection operation are recontacted for quality assurance purposes.

The Census Bureau employs a separate strategy to collect data from group quarters. The Census Bureau collects data for sampled people in group quarters through personal interview and telephone interview. The Census Bureau will obtain the facility information by conducting a telephone or personal visit interview with a group quarter contact. During this interview, the Census Bureau obtains a roster of residents and randomly selects them for person-level interviews. The facility also has the option of uploading their facility roster to the Census Bureau online listing application. During the person-level phase, a field representative uses a computer-assisted personal interview automated instrument to collect detailed information for each sampled resident. The field representative also has the option to distribute a bilingual (English/Spanish) questionnaire to residents for self-response if they are unable to complete a computer-assisted personal interview. Beginning in 2024, respondents in some group quarters will have the option to self-respond to the survey online. A small sample of facilities are recontacted for quality assurance purposes.

In 2018, the OMB in conjunction with the Census Bureau, solicited proposals for question changes or additions from over twenty federal agencies participating in the OMB Interagency Committee for the ACS (including the PRCS). The proposals contained a justification for each change and described any previous testing of question wording, the expected impact of the proposed revisions to the estimates, and the estimated respondent burden. For proposed new questions, the justification also described the need for the new data, whether federal law or regulations supported the collection of the data for small areas or small populations, if other data sources were available to provide the information, how policy needs or emerging data needs would be addressed through the new question, an explanation of why the data were needed with the

geographic precision and frequency provided by the ACS and the PRCS, and described any previous testing of the questions.

Proposals were reviewed by OMB, the Census Bureau, as well as the Interagency Council on Statistical Policy (ICSP) Subcommittee on the ACS. The ICSP Subcommittee on the ACS advises the Chief Statistician of the United States at OMB and the Director of the Census Bureau on how the ACS can best fulfill its role in the portfolio of federal household surveys and provide the most useful information with the least amount of burden.

After the proposals were reviewed and approved, topical subcommittees were formed from stakeholder federal agencies to develop question wording and provide input on testing and evaluation methodology. Cognitive testing was conducted for all questions. The Census Bureau contracted with Research Triangle Institute (RTI) International, who conducted three rounds of cognitive testing. The results of cognitive testing from the first two rounds informed the decisions on specific wording to proceed with testing. These rounds of testing included both English and Spanish and testing for different modes of administration. An additional third round of cognitive testing was conducted in Spanish in Puerto Rico and in English for residents of group quarters (facilities where groups of unrelated people live such as nursing homes, college dorms, and military barracks). With approval from OMB, questions were tested in the 2022 Content Test, which was a split-sample field test. Data from the test were used to evaluate the proposed question changes using a variety of metrics, including item missing data rates, response distributions, comparisons to benchmarks, response reliability, and other topic-specific metrics.

The topical subcommittees reviewed the results of the field test and made recommendations to either implement the tested change or to keep the question as is. Changes were recommended for the following topics: household roster, educational attainment, health insurance coverage, disability, and labor force questions. The topical subcommittees also supported adding three new questions on solar panels, electric vehicles, and sewage disposal. Changes to three tested topics—Income, Labor Force, and the Supplemental Nutrition Assistance

Program (SNAP)—were not recommended. These topics tested changes to the reference period from the “last 12 months” to the last calendar year, in preparation for eventually using administrative data to replace or supplement income data on the ACS. Before implementing a change to the reference period, further evaluation with administrative records data needs to be completed once administrative data are available. Therefore, a decision on implementation of changing the reference period will be delayed until that analysis can be completed. The ACS will move forward with recommending changes to the instructions for the labor force questions.

The ICSP Subcommittee on the ACS reviewed the proposed content changes and recommended their approval to the OMB and the Census Bureau. The proposed content changes would apply to the ACS and PRCS paper questionnaire and automated data collection instruments for both Housing Unit and Group Quarters operations.

III. Data

OMB Control Number: 0607–0810.

Form Number(s): ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ), ACS–1(PR)(GQ), GQFQ, ACS CAPI (HU), ACS RI (HU), ACSGQFQ, ACS GQQI, and ACS GQRI.

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3,576,000 for household respondents; 20,100 for contacts in GQ; 170,900 people in GQ; 22,875 households for reinterview; and 1,422 GQ contacts for reinterview. The total estimated number of respondents is 3,791,297.

Estimated Time per Response: 40 minutes for the average household questionnaire; 15 minutes for a GQ facility questionnaire; 25 minutes for a GQ person questionnaire; 10 minutes for a household reinterview; 10 minutes for a GQ-level reinterview.

Estimated Total Annual Burden Hours: 2,384,000 for household respondents; 5,025 for contacts in GQ; 71,208 for GQ residents 3,813 households for reinterview; and 237 GQ contacts for reinterview. The estimate is an annual average of 2,464,283 burden hours.

TABLE 1—ANNUAL ACS AND PRCS RESPONDENT AND BURDEN HOUR ESTIMATES

Data collection operation	Forms or instrument used in data collection	Annual estimated number of respondents	Estimated minutes per respondent by data collection activity	Annual estimated burden hours
I. ACS Household Questionnaire, Online Survey, Telephone, and Personal Visit.	ACS–1, ACS 1(SP), ACS–1PR, ACS–1PR(SP), Online Survey, Telephone, CAPI.	3,576,000	40	2,384,000
II. ACS GQ Facility Questionnaire CAPI—Telephone and Personal Visit.	CAPI GQFQ	20,100	15	5,025
III. ACS GQ CAPI Personal Interview or Telephone, and Paper Self-response.	CAPI, ACS–1(GQ), ACS–1(GQ)(PR)	170,900	25	71,208
IV. ACS Household Reinterview—CATI/CAPI	ACS HU–RI	22,875	10	3,813
V. ACS GQ-level Reinterview—CATI/CAPI	ACS GQ–RI	1,422	10	237
Totals .....	.....	3,791,297	N/A	2,464,283

Estimated Total Annual Cost to Public: \$0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23249 Filed 10–19–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[Docket No. 231005–0239]

Membership of the Performance Review Boards

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of Membership on the OS Performance Review Board, ITA Performance Review Board, and the EDA, NTIA, BIS, and MBDA Performance Review Board.

SUMMARY: The Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Office of the Secretary (OS) Performance Review Board, International Trade Administration (ITA) Performance Review Board, and the Economic Development Administration (EDA), National Telecommunications and Information Administration (NTIA), Bureau of Industry and Security (BIS), Minority Business Development Agency (MBDA) Performance Review Board.

DATES: The period of appointment for those individuals selected for the Performance Review Boards begins on October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer Jeffries, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW, Washington, DC 20230, at (202) 306–0426.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c) (4), the Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the OS Performance Review Board, ITA Performance Review Board, and the EDA, NTIA, BIS, and MBDA Performance Review Board. The Performance Review Boards are responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments and bonuses. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months. The members listed in this notice can serve on any of the three boards mentioned if alternate members are needed.

The name, position title, and type of appointment of each member of the Office of the Secretary Performance Review Board are set forth below:

1. *Department of Commerce, Office of the Deputy Secretary within Enterprise Services, LaMarsha DeMarr, Director, Human Resources Services, Enterprise Services Career SES*
2. *Department of Commerce, Office of Legislative and Intergovernmental Affairs, Rachit Choksi, Director for Oversight, Non-Career SES*
3. *Department of Commerce, Office of Budget, Michael Phelps, Director, Office of Budget, Career SES*
4. *Department of Commerce, Economic Development Administration, Angela Martinez, Denver Regional Director, Career SES*
5. *Department of Commerce, Office of the Deputy Chief Financial Officer for Financial Management, Holden*

- Hoofnagle, Director, Office of Financial Management, Career SES
6. *Department of Commerce, Office of General Counsel*, Beth Grossman, Assistant General Counsel for Legislation and Regulation, Career SES
 7. *Department of Commerce, Bureau of Economic Analysis*, Kathleen James Chief Administrative Officer, Career SES

The name, position title, and type of appointment of each member of the EDA, NTIA, BIS and MBDA Performance Review Board are set forth below:

1. *Department of Commerce, National Oceanic and Atmospheric Administration*, Octavia Saine, Deputy Director, Office of Human Capital Services, Career SES
2. *Department of Commerce, National Telecommunications and Information Administration*, Catrina Purvis, Chief Information Officer and Director of Administration, Career SES
3. *Department of Commerce, National Telecommunications and Information Administration, (NTIA) First Responder Network Authority*, Jeffrey Bratcher, Chief Technology Officer, Career SES
4. *Department of Commerce, Economic Development Agency (EDA)*, Harry Phillip Paradise Jr., Regional Director, Atlanta Regional Office, Career SES
5. *Department of Commerce, National Telecommunications and Information Administration (NTIA)*, Douglas Kinkoph, Associate Administrator for Telecommunications and Information Applications, Career SES
6. *Department of Commerce, National Telecommunications and Information Administration (NTIA)*, Philip Murphy, Senior Advisor, Non-Career SES

The name, position title, and type of appointment of each member of the International Trade Administration Performance Review Board are set forth below:

1. *Department of Commerce, International Trade Administration*, Alex Villanueva, Senior Director, Career SES
2. *Department of Commerce, Office of the Deputy Assistant Secretary for Administration within the Office of Facilities and Environmental Quality*, Harold Washington, Deputy Director, Career SES
3. *Department of Commerce, Office of the Deputy Assistant Secretary for*

- Administration within the Office of Security*, Isabel Lisle Hannah, Director for Facilities and Environmental Quality, Career SES
4. *Department of Commerce, Bureau of the Census*, Veronica LeGrande, Chief, Human Resources Division, Career SES
 5. *Department of Commerce, International Trade Administration*, Cynthia Aragon, Director, Advocacy Center, Non-Career SES
 6. *Department of Commerce, National Oceanic and Atmospheric Administration*, Hakeem Basheerud-Deen, Director, Office of Human Capital Services, Career SES

Dated: October 16, 2023.

Jessica S. Palatka,

Director, Office of Human Resources Management (OHRM) and Chief Human Capital Officer (CHCO).

[FR Doc. 2023–23120 Filed 10–19–23; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Review: Notice of Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Panel Decision.

SUMMARY: On October 5, 2023, the Binational Panel issued its Decision in the matter of Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances (Secretariat File Number: USA–CDA–2017–1904–03). The Binational Panel affirmed in part and remanded in part the Department of Commerce’s Final Determination.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–2311.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to provide judicial review of the trade remedy determination being challenged and then issue a binding Panel Decision.

There are established *Rules of Procedure for Article 1904 Binational Panel Reviews*, which were adopted by the three governments for panels requested pursuant to Article 1904(2) of NAFTA. The notice of this Binational Panel’s Decision is being published pursuant to Rule 70. For the complete Rules, please see https://can-mex-usa-sec.org/secretariat/agreement-acuerdo-acuerdo/nafta-alena-tlcan/rules-regles-reglas/article-article-articulo_1904.aspx?lang=eng.

Dated: October 6, 2023.

Vidya Desai,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2023–22599 Filed 10–19–23; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People’s Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on drawn stainless steel sinks from the People’s Republic of China (China) would be likely to lead to the continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Grossnickle, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On April 11, 2013, Commerce published in the **Federal Register** the CVD order on drawn stainless steel sinks from China.¹ On July 3, 2023, Commerce published in the **Federal Register** the *Initiation Notice* of the second five-year sunset review of the Order pursuant to section 751(c) of the

¹ See *Drawn Stainless Steel Sinks from the People’s Republic of China: Countervailing Duty Order*, 78 FR 21596 (April 11, 2013) (Order).

Tariff Act of 1930, as amended (Act).² In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received a timely notice of intent to participate in this sunset review from Elkay Manufacturing Company (Elkay), the domestic interested party, within 15 days after the date of publication of the *Initiation Notice*.³ Elkay claimed interested party status under section 771(9)(C) of the Act as a producer of domestic like product in the United States.

Commerce received an adequate substantive response to the *Initiation Notice* from Elkay within the 30-day period specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce received no substantive responses from any other interested parties, including the Government of China, with respect to the order covered by this sunset review.

On August 22, 2023, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from other interested parties.⁵ As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited, *i.e.*, 120-day, sunset review of the *Order*.

Scope of the Order

The merchandise covered by the *Order* includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this *Order* if they are included within the sales price of the drawn stainless steel sinks.⁶ Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

² See *Initiation of Five-Year (Sunset) Reviews*, 88 FR 42688 (July 3, 2023) (*Initiation Notice*).

³ See Elkay's Letter, "Second Five-Year ('Sunset') Review of Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China/Elkay Manufacturing Company's Notice of Intent to Participate," dated July 17, 2023.

⁴ See Elkay's Letter, "Second Five-Year ('Sunset') Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China/Substantive Response to the Notice of Initiation," dated August 2, 2023.

⁵ See Commerce's Letter, "Sunset Reviews Initiated July 3, 2023," dated August 22, 2023.

⁶ Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered.

The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.⁷

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of a countervailable subsidy at the rates listed below:⁸

Exporter/producer	Subsidy rate (percent <i>ad valorem</i>)
Guangdong Yingao Kitch Utensils Co., Ltd. and Forshan Magang Kitchen Utensils Co., Ltd	4.90
Zhongshan Superte Kitchenware Co., Ltd	12.31
Foshan Zhaoshun Trae Co., Ltd	12.36
All Others	8.61

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary

⁷ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁸ See *Order*, 70 FR at 21596–97.

information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: October 13, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Likely to Prevail
 3. Nature of the Subsidy
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2023–23269 Filed 10–19–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Capital Readiness Program Online Customer Relationship Management (CRM)/Performance Databases

AGENCY: Minority Business Development Agency (MBDA), 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 December 19, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to Minority Business Development Agency PRA Officer at PRAComments@doc.gov. 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 Amit Patel, Program Director, Minority Business Development Agency, Room 5095F, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 880-4457 or apatel@mbda.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2023, MBDA awarded cooperative agreements under the Notice of Funding Opportunity for the MBDA Capital Readiness Program. In accordance with the Government Performance and Results Act/Modernization Act (GPRA/MA), and the Foundations for Evidence-based Policymaking Act of 2018 (Evidence Act), MBDA requires all award recipients to report basic participant information, service activities and progress on attainment of program goals via the Online CRM/Performance Database. The data inputs into the Online CRM/Performance Database originate from progress report forms used by each awardee to collect information about each participant that receives technical assistance services under the Capital Readiness Program. This data provides the baseline from which the Online CRM/Performance Database is populated. The Online CRM/Performance Database is used to regularly monitor and evaluate the progress of the MBDA programs, to provide the Department and OMB with a summary of the quantitative any information required to be submitted about government supported programs, to implement the GPRA/MA, conduct program evaluation in support of the Evidence Act. This information may also be summarized and included in the MBDA Annual Performance Report, which is made available to the public. The MBDA technical assistance programs continue to use the Online CRM/Performance Database. The client transaction and verification forms will

be used to collect information about the effectiveness of the programs funded by the agency. The forms include a statement regarding MBDA's intended use and transfer of the information collected to other federal agencies for the purpose of conducting research and studies on minority and underserved businesses.

II. Method of Collection

Information will be collected manually and electronically.

III. Data

OMB Control Number: New collection.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions.

Estimated Number of Respondents: 43.

Estimated Time per Response: 15 min.

Estimated Total Annual Burden

Hours: 6,250.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Mandatory.

Legal Authority: The statutory authority for the MBDA Capital Readiness Program is 3009(e)(2) of the Small Business Jobs Act of 2010, as amended by the American Rescue Plan Act of 2021 (ARP) (codified at 12 U.S.C. 5708(e)(2)). MBDA's programmatic authority is 15 U.S.C. 9501-9598.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your

personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023-22093 Filed 10-19-23; 8:45 am]

BILLING CODE 3510-21-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Diving Program

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 August 17, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Department of Commerce.

Title: NOAA Diving Program.

OMB Control Number: 0648-XXXX.

Form Number(s): None.

Type of Request: Regular submission.

This is a new information collection.

Number of Respondents: 483.

Average Hours per Response: The time for response varies depending on the collection instrument. The response times range from one minute to two hours.

Total Annual Burden Hours: 221.

Needs and Uses: This is a request for approval of a collection currently in use without OMB approval.

The NOAA Diving Program (NDP) is administered by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), and is headquartered at the NOAA Western Regional Center (WRC) in

Seattle, Washington. The NDP provides the guidelines, policy, and training for all NOAA Divers, which includes all NOAA employees who dive, as well as contractors and volunteers, among others, who conduct diving operations.

With more than 300 divers, the National Oceanic and Atmospheric Administration (NOAA) has the largest complement of divers of any civilian federal agency. NOAA Divers conduct operations in our nation's waters and beyond in support of NOAA's scientific research and operations. They are called upon to work in various conditions ranging from the warm, clear waters of a marine sanctuary, to the cold, murky waters of a commercial harbor. The tasks NOAA Divers complete are as varied as the waters they dive in, with most divers supporting projects and research of the National Ocean Service (NOS), the National Marine Fisheries Service (NMFS), and the Office of Marine and Aviation Operations (OMAO).

NOAA Divers are required to maintain a high level of proficiency, both in practice (in the water) and in theoretical understanding (academic learning) in order to continue to dive at NOAA. In addition, NOAA Divers must maintain medical fitness to dive and are required to send their diving equipment out for maintenance as scheduled. If requirements are not met, divers may become unauthorized to dive or suspended. In order to become NOAA Divers, candidates must first submit a diving physical to the NOAA Diving Medical Officers to determine if they are medically fit to dive. After that, divers must complete medical documentation annually to maintain authorization to dive. To maintain fitness to dive, it is imperative that divers recognize the need for a continual and aggressive exercise program that exceeds basic health maintenance standards.

Affected Public: Individuals.

Frequency: As needed.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 29 CFR Subpart T, Commercial Diving Operations.

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 the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23251 Filed 10–19–23; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD463]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Social Science Planning Team (SSPT) will meet in Anchorage, AK. See **SUPPLEMENTARY INFORMATION.**

DATES: The meeting will be held on Friday, November 3, 2023, from 8:30 a.m. to 4:30 p.m., Alaska Time.

ADDRESSES:

Meeting address: The meeting will be a hybrid meeting. The in-person component of the meeting will be held at the North Pacific Fishery Management Council office, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501.

If you are attending virtually, join the meeting online through the link at at <https://meetings.npfmc.org/Meeting/Details/3017>.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT:

Sarah Marrinan, Council staff; phone: (907) 271–2809; email: sarah.marrinan@noaa.gov. For technical support, please contact our admin Council staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Agenda

Friday, November 3, 2023

The SSPT agenda will meet to discuss research priorities, and other business. The agenda is subject to change, and the latest version will be posted [https://meetings.npfmc.org/Meeting/Details/](https://meetings.npfmc.org/Meeting/Details/3017)

3017 prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/3017>.

Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/3017>.

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

Dated: October 16, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23149 Filed 10–19–23; 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; Basic Requirements for Special Exception Permits and Authorizations To Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under Section 104 of the Marine Mammal Protection Act, the Fur Seal Act, and/or Section 10(a)(1)(A) of the Endangered Species Act

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 June 28, 2023, 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: Basic Requirements for Special Exception Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under section 104 of the Marine Mammal Protection Act, the Fur Seal Act, and/or section 10(a)(1)(A) of the Endangered Species Act.

OMB Control Number: 0648–0084.

Form Number(s): NOAA FORMs 89–880, 89–881, and 89–882.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 423.

Average Hours per Response: The estimated average amount of time it takes to complete each information collection instrument is as follows. Scientific research and enhancement permit applications, 50 hours; public display permit applications, 50 hours; protected species parts applications, 20 hours; photography permit applications, 10 hours; General Authorization Letters of Intent, 10 hours; major permit modification requests, 35 hours; minor permit modification requests, 3 hours; scientific research permit reports, 12 hours; scientific research parts only permit reports, 8 hours; General Authorization reports, 8 hours; public display permit reports, 2 hours; photography permit reports, 2 hours; public display inventory reporting, 2 hours; and general record keeping, 2 hours per each type.

Total Annual Burden Hours: 6,568.

Needs and Uses: The National Marine Fisheries Service (NMFS), Office of Protected Resources, Permits and Conservation Division is proposing an extension of the currently approved information collection OMB Control Number 0648–0084. The information collection request (IRC) is under the authority of the Marine Mammal Protection Act (MMPA), the Fur Seal Act (FSA), and the Endangered Species Act (ESA). This information collection applies to certain protected species for which NMFS is responsible: cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions); and, for ESA scientific research and enhancement permits: smalltooth sawfish, sea turtles (in water), sturgeon (Atlantic and shortnose), and certain foreign ESA-listed species. This information collection may be used for future ESA-listed species.

The MMPA, FSA, and ESA prohibit “take” (e.g., to harass or harm), import, and export of marine mammals and endangered and threatened species, with limited exceptions. Pursuant to section 104 of the MMPA and section

10(a)(1)(A) of the ESA, individuals, business or other for-profit organizations, not-for-profit institutions, and government agencies may obtain special exception permits to take, import, or export marine mammals or endangered or threatened species for scientific research or enhancement purposes. Section 104 of the MMPA also provides for Letters of Confirmation under a General Authorization for scientific research; permits for commercial and educational photography of marine mammals; and permits for capture and/or import of marine mammals for public display.

Persons or institutions seeking to take, import, or export protected species must apply for a permit or authorization and demonstrate the statutory and regulatory requirements are met. The regulations pertaining to permits and associated reporting under the MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222. The required information in this collection is used by NMFS to make the determinations required by the MMPA, FSA, ESA, and their implementing regulations prior to issuing a permit or authorization; to establish appropriate conditions; to evaluate the impacts on protected species; and, to ensure compliance with the Acts.

Information required includes the name, affiliation, contact information and qualifications of the applicant and others listed on the application; the purpose of the request; the species, age, sex, and number of animals; the proposed methods and mitigation to minimize impacts to the species; a description of the impacts to the species and environment; and the requested time frame of the permit. Permit and authorization holders must submit reports on the activities they carry out.

The MMPA requires NMFS to maintain an inventory of marine mammals in public display facilities and for those facilities to report certain information to NMFS via the National Inventory of Marine Mammals (NIMM). The NIMM forms include an institutional contact form, a marine mammal data sheet (MMDS), and a transfer/transport notification form. Inventory information required by the MMPA includes the animal’s name or other identification; sex; birth date; date animal enters and leaves a collection; source of the animal (e.g., stranding); where an animal is transferred or transported; and date and cause of death (when determined). Exporting facilities must provide documentation to NMFS that the recipient facility meets standards comparable to those required

in the United States. The NIMM forms facilitate compliance with MMPA reporting requirements and allow NMFS to keep NIMM up to date. Based on public comment on the previous PRA notice, we simplified the blank MMDS to only include information necessary for reporting a birth, release, or death, and included definitions for the fields on the MMDS. We are not proposing any changes to the MMDS or the other NIMM forms at this time.

NMFS had originally proposed to provide additional guidance to improve the reasonableness of our applicant’s take estimates and the accuracy of their subsequent reporting. However, we are no longer proposing those changes due to resource limitations at this time. We plan to work on developing additional take guidance for permit applicants as time and resources allow.

Affected Public: Individuals; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Frequency: Permit applications, once every five or ten years; permit reports, annually or more frequently if incidents occur; amendments and modifications to permits, as frequently as requested by permit holders; public display inventory reporting, 15 days prior to transporting or transferring marine mammals and 30 days after the date of birth or death of a marine mammal.

Respondent’s Obligation: Public display forms are mandatory; permit applications are required to receive a permit.

Legal Authority: MMPA (16 U.S.C. 1361 *et seq.*), FSA (16 U.S.C. 1151 *et seq.*), and ESA (16 U.S.C. 1531 *et seq.*).

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 0648–0084.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23250 Filed 10–19–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD410]

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Shark Research Fishery Permits; Letters of Acknowledgment

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), and shark research fishery permits for Atlantic highly migratory species (HMS) in 2024. EFPs and related permits would authorize collection of a limited number of HMS, including tunas, swordfish, billfishes, and sharks, from Federal waters in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea for the purposes of scientific research, data collection, the investigation of bycatch, and public display, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2024, unless otherwise specified in the permit, subject to the terms and conditions of individual permits.

DATES: Written comments received in response to this notice will be considered by NMFS when issuing EFPs and related permits, and must be received on or before November 20, 2023.

ADDRESSES: Comments may be submitted electronically via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA–NMFS–2023–0118” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Elsa Gutierrez, 301–427–8503, elsa.gutierrez@noaa.gov.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. The regulations specific to HMS EFPs and related permits can be found at § 635.32.

NMFS issues EFPs and related permits where HMS regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activities that NMFS has an interest in permitting or acknowledging. Consistent with §§ 600.745 and 635.32, the NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Collection of HMS under EFPs, SRPs, display permits, and shark research fishery permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the relevant quota, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

The Magnuson-Stevens Act exempts scientific research conducted by a scientific research vessel from the definition of “fishing.” NMFS issues LOAs acknowledging such bona fide research activities involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. For such activities, NMFS reviews scientific research plans and may issue an LOA acknowledging that the proposed activity is scientific research for purposes of the Magnuson-Stevens Act. Examples of research acknowledged by LOAs include tagging and releasing sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is not defined as “fishing” subject to the Magnuson-Stevens Act, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs that authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (i.e., tunas, swordfish, and billfish). One example of research conducted under SRPs consists of scientific surveys of tunas, swordfish, and billfish conducted from NOAA research vessels.

EFPs are issued for activities conducted from commercial or recreational fishing vessels. Examples of activities conducted under EFPs include collection of young-of-the-year bluefin tuna for genetic research from recreational fishing vessels; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure; and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS also intends to issue display permits for the collection of sharks and other HMS for public display in 2024. Collection of sharks and other HMS

sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (e.g., sand tiger sharks), and collection of fish below the regulatory minimum size. NMFS published the final rule for Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected 73 FR 40658, July 15, 2008) which included, among other things, that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of HMS within existing quotas, and the impacts of the activities to be conducted have been previously analyzed in various environmental assessments and environmental impact statements for HMS management. In most such cases, NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of HMS, or rarely, for research that is particularly controversial. NMFS will provide additional opportunity for public comment, consistent with the regulations at § 600.745, should such applications be received by NMFS.

In addition, this notice invites comments on the shark research fishery first implemented through Amendment 2 to the 2006 Consolidated HMS FMP. This research fishery is conducted under the auspices of the EFP program.

Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: the collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks; and the collection of sharks to update the weight conversion factor from dressed weight to whole weight. Shark research fishery participants are subject to 100-percent observer coverage. In recent years, all non-prohibited shark species brought back to the vessel dead have been required to be retained and were counted against the appropriate quotas of the shark research fishery participant. Additionally, in recent years, all participants of the shark research fishery were limited to a very small number of dusky shark mortalities on a regional basis. Once the designated number of dusky shark mortalities occurs in a specific region, certain terms and conditions are applied (e.g., soak

time limits). While the specific terms and conditions of the 2024 shark research fishery permit have yet to be decided, NMFS expects that participants would continue to be limited in the number of sets allowed on each trip and the number of hooks allowed on each set and on the vessel itself. A **Federal Register** notice describing the specific objectives for the shark research fishery in 2024 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2024 during the comment period of this notice.

The number of specimens that has been authorized thus far under EFPs and other related permits for 2023, as well as the number of specimens collected in 2022, is summarized in Table 1. The total amount of collections in 2022 was within the analyzed quotas for all quota-managed HMS species. The number of specimens collected in 2023 will be available when all 2023 interim and annual reports are submitted to NMFS.

In all cases, mortalities associated with EFPs, SRPs, or display permits (except for larvae) are counted against the appropriate quota. NMFS issued a total of 43 EFPs, SRPs, display permits, and LOAs in 2022 for the collection of HMS and 5 shark research fishery permits. As of September 26, 2023, NMFS has issued a total of 45 EFPs, SRPs, display permits, and LOAs and 3 shark research fishery permits.

TABLE 1—SUMMARY OF HMS EXEMPTED FISHING PERMITS ISSUED IN 2022 AND 2023, OTHER THAN SHARK RESEARCH FISHERY PERMITS

Permit type	Species	2022			2023	
		Permits issued	Authorized fish (numbers) ¹	Fish kept/discarded dead (numbers)	Permits issued	Authorized fish (numbers) ¹
EFP	HMS	9	626	0	2	184
	Shark	2	¹ N/A	9	8	¹ N/A
	Tuna	2	500	0	2	30
SRP	HMS	7	1,101	65	8	1,027
	Swordfish	0	0	0	1	30
Display	HMS	2	82	0	1	55
	Shark	4	270	34	3	223
Total	.....	26	2,579	108	25	1,549
LOA	Shark	17	¹ N/A	158	20	¹ N/A

Note: "HMS" refers to multiple species being collected under a given permit type.

¹ Some shark EFPs, SRPs, and LOAs were issued for the purposes of tagging and the opportunistic sampling of sharks or other HMS and were not expected to result in large amounts of mortality, thus no limits on sampling were set. Some mortality may occur throughout 2023, and will be accounted for under the appropriate shark research and display quota.

Final decisions on the issuance of any EFPs, SRPs, display permits, and shark research fishery permits will depend on the submission of all required information about the proposed activities, NMFS's review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant National Environmental Policy Act documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs, consistent with the assessment of such activities within the environmental impacts analyses in existing HMS actions, including the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, Amendment 2 to the Consolidated HMS FMP, the Environmental Assessment for the 2012 Swordfish Specifications, the Environmental Assessment for the 2022 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures, and the 2022 Zero Atlantic Shortfin Mako Shark Retention Limit Final Rule.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: October 17, 2023.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2023-23169 Filed 10-19-23; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* November 19, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 09/15/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(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) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):

5180-01-563-7475—Tool Kit, Artillery and Turret (ATTK)

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA AVIATION

Distribution: C-List

Mandatory for: 100% of the requirement of the Department of Defense

Deletions

On 09/15/2023, the Committee for Purchase From People Who Are Blind

or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7530-01-618-8427—Cover, Record Book,

Digital Camouflage, 6" x 9"

7510-01-053-5591—Portfolio, Writing,

Economy, Black, 9" x 6-1/8"

7510-00-145-0296—Portfolio, Writing,

Economy, Black, 12-1/8" x 9-1/2"

7510-01-557-4969—Portfolio, Note Pad

Holder, Custom Logo, 6" x 9"

7510-01-557-4970—Portfolio, Pocket,

with Pad, Camouflage, 4" x 6"

7510-01-557-4979—Portfolio, Note Pad

Holder, Army Logo, Camouflage, 6" x 9"

7510-01-557-4977—Pad Holder Portfolio,

Standard, Digital Camouflage, Letter Size

7510-01-557-4978—Portfolio, Note Pad

Holder, Camouflage, 6" x 9"

7510-01-600-8651—Portfolio, Pocket,

with Pad, Camouflage, 6" x 9"

7510-01-557-4980—Portfolio, Pad Holder,

Deluxe, Brass Clip and Corners,

Camouflage, 6" x 9"

7510-01-557-4981—Pad Holder Portfolio,

Deluxe, Brass Clip and Corners, Digital

Camouflage, Letter Size

7510-01-483-8891—Portfolio, Note Pad

Holder, Burgundy, 6" x 9"

7510-01-483-8895—Pad Holder Portfolio,

Standard, Burgundy, Letter Size

7510-01-483-8897—Portfolio, Pad Holder,

Deluxe, Brass Clip and Corners,

Burgundy, 6" x 9"

7510-01-483-8899—Portfolio, Pad Holder, Deluxe, Brass Clip and Corners, Black, 6" x 9"
 7510-01-483-8890—Portfolio, Note Pad Holder, Black, 6" x 9"
 7510-01-483-8892—Pad Holder Portfolio, Deluxe, Brass Clip and Corners, Burgundy, Letter Size
 7510-01-483-8894—Pad Holder Portfolio, Deluxe, Brass Clip and Corners, Black, Letter Size
 7510-01-484-0004—Pad Holder Portfolio, Standard, Black, Letter Size
Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR 2, NEW YORK, NY

Service(s)

Service Type: Sourcing, Warehousing, Assembly, and Kitting
Mandatory for: USPFO Connecticut, National Guard Bureau, National Guard Armory, 360 Broad Street, Hartford, CT
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY, W7MZ USPFO ACTIVITY CT ARNG
Service Type: Furniture Design, Configuration and Installation
Mandatory for: USPFO Connecticut, National Guard Bureau, National Guard Armory, 360 Broad Street, Hartford, CT
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY, W7MZ USPFO ACTIVITY CT ARNG

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-23246 Filed 10-19-23; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* November 19, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R.

Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Contractor Operated Parts Store
Mandatory for: Offsite Contractor Operated Parts Store (COPARS), Best Work Industries for the Blind, Cherry Hill, NJ
Designated Source of Supply: BESTWORK INDUSTRIES FOR THE BLIND, INC., Cherry Hill, NJ
Contracting Activity: DEPT OF THE NAVY, NAVAIR WARFARE CTR AIRCRAFT DIV LKE

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-23245 Filed 10-19-23; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information

collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR—Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the "Commission" or "CFTC") by clicking on the "Submit Comment" box next to the descriptive entry for OMB Control No. 3038-0076, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.¹ The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Joseph Opron, Special Counsel, Division of Clearing and Risk, Commodity

¹ 17 CFR 145.9.

Futures Trading Commission, (312) 596-0653; email: jopron@cftc.gov.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Derivatives Clearing Organizations (OMB Control No. 3038-0076). This is a request for a revision of a currently approved information collection.

Abstract: On July 13, 2023, the Commission published a Final Rule adopting amendments that included new information collection requirements. See Final Rule, *Governance Requirements for Derivatives Clearing Organizations*, 88 FR 44674 (Jul. 13, 2023). The revised rules require a DCO to create and maintain minutes of each Risk Management Committee (RMC) meeting and to maintain written policies and procedures to make certain that its RMC includes at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members. The revised rules also require a DCO to adopt written policies and procedures related to the formation and role of each risk advisory working group (RWG), and to include in those policies and procedures requirements for the DCO to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

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. On July 13, 2023, the Commission published in the **Federal Register** notice of the proposed revision of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 44781 (“60-Day Notice”). The Commission received no relevant comments that addressed its PRA burden estimates.

Burden Statement: The Commission is revising its burden estimate for OMB control number 3038-0076 to account for the amendments described above. Specifically, the Commission believes that the burden under this clearance will increase because the 15 DCOs subject to these requirements will be required under § 39.24(b)(11) to create and maintain minutes of each RMC meeting, and under § 39.24(b)(12) to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG. The Commission estimates a DCO will spend an average of four hours creating minutes of each RMC meeting and four hours documenting a summary of the topics discussed and the main points

raised during each meeting of the RWG, which includes attending the meeting, taking notes, and putting the notes into the required format following the meeting. The Commission estimates that a DCO’s RMC and RWG will each need to hold an average of six meetings per year to satisfy the §§ 39.24(b)(11) and (12) requirements that a DCO’s RMC and RWG address all matters that could materially affect the risk profile of the DCO. Based upon the above, the estimated hour burden for this collection is calculated as follows:

Estimated number of respondents: 15.²

Estimated number of reports per respondent: 18.

Average number of hours per report: 4.

Estimated gross annual reporting burden: 1,080.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 17, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023-23255 Filed 10-19-23; 8:45 am]

BILLING CODE 6351-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NCCC Team Leader Application

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled NCCC Team Leader Application for review and approval in accordance with the Paperwork Reduction Act.

² The Commission notes that while new § 39.24(d) provides that a DCO may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) by having rules that permit it to clear only fully collateralized positions, such DCOs are included in the total estimated number of respondents because these DCOs would still be required to develop and disclose governance arrangements required by the other provisions of § 39.24. The Commission’s estimate is therefore conservative to the extent that these DCOs are not required to prepare and maintain minutes of each RMC meeting, and document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, John Christman, at 202-606-3871 or by email to jchristman@americorps.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on July 28, 2023 at 88 FR 48802. This comment period ended September, 26, 2023. No public comments were received for the 60-day Notice.

Title of Collection: AmeriCorps NCCC Team Leader Application.

OMB Control Number: 3045-0005.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 800.

Total Estimated Number of Annual Burden Hours: 1600.

Abstract: The NCCC Team Leader application, which is available electronically for all applicants, provides information AmeriCorps uses

to select Team Leaders for AmeriCorps NCCC. AmeriCorps seeks to renew the current information collection.

Walter Goodson,

Director, AmeriCorps NCCC.

[FR Doc. 2023–23119 Filed 10–19–23; 8:45 am]

BILLING CODE 6050–28–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–0016]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing information collection for OMB review and approval and requests public review and comment on the submission. The agencies received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by December 19, 2023.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Records Management Specialist, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

- *Email:* fedreg@dfc.gov.

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: The agency received no comments in response to the sixty (60) day notice published in **Federal Register** at 88 FR 54308 on August 10, 2023. Upon publication of this notice, DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Application for Technical Assistance.

Type of Review: New Review.

Agency Form Number: DFC–0016.

OMB Form Number: XXXX–XXX.

Frequency: Once per applicant per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 250.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 375 hours.

Abstract: The Application for Technical Assistance is the principal document used by DFC to determine the applicants eligibility for technical assistance from DFC's TA unit.

Deborah Papadopoulos,

Records Management Specialist.

[FR Doc. 2023–23159 Filed 10–19–23; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2023–HQ–0014]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the U.S. Army Corps of Engineers 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 December 19, 2023.

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

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 U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314–1000, ATTN: Ms. Kathryn Nevins, or call 703–428–6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Managed Aquifer Recharge Planning and Guidance Study; OMB Control Number 0710–MARP.

Needs and Uses: The survey will inform the development of a screening tool and other resources for USACE Districts to identify optimal sites for Managed Aquifer Recharge (MAR), which uses captured surface water to replenish groundwater. The Water Resources Development Act (WRDA) of 2016 provides authority for water supply conservation projects for drought resilience and water supply availability studies for water resources development (Sections 1116 and 1118, respectively). The WRDA of 2016 further requires USACE to consider natural and nature-based features, such as MAR, as potential solutions to address various challenges along with other measures. However, USACE has not developed a strategic framework for incorporating MAR into its operations. Furthermore,

the Institute for Water Research concluded that Districts only engage with aquifer recharge in an “ad hoc” manner and recommended that USACE “upgrade its internal capacity in MAR.” (IWR 2020). The WRDA of 2022 instructs USACE to “conduct a study at Federal expense to determine the feasibility of carrying out managed aquifer recharge projects to address drought, water resiliency, and aquifer depletion.” Following these recommendations, the proposed work contributes to the development of guidance on MAR. This aligns with Civil Works strategies for flood risk management, restoration of aquatic ecosystems in floodplains, and developing environmentally sustainable technical services that enhance public safety and require collaborative partnerships.

The U.S. Army Corps of Engineers—Engineer Research and Development Center (ERDC) has partnered with Arizona State University (ASU) through the Cooperative Ecosystems Studies Units (CESU) Network to complete the “Managed Aquifer Recharge Planning and Guidance Study” and meet the above goals and directives. The design of an effective screening tool and other resources for implementing MAR requires information held by key stakeholders and decision-makers to understand the challenges and needs associated with implementing MAR in regions around the nation. Developing the screening tool and other resources will further require identifying practitioners and stakeholders interested in participating in pilot projects.

The ASU Principal Investigator and research team will deploy a survey to inform the development of a MAR screening tool by gathering information about the knowledge, perceptions, and attitudes of stakeholders and decision-makers about MAR. The survey will target a purposively developed sample of key water and floodplain stakeholders and decision-makers from across the continental United States.

Affected Public: Individuals or households; not-for-profit Institutions; State, local or Tribal government.

Annual Burden Hours: 400.

Number of Respondents: 1,600.

Responses per Respondent: 1.

Annual Responses: 1,600.

Average Burden per Response: 15 minutes.

Frequency: One-time.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–23129 Filed 10–19–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–HA–0102]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 2023.

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

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 Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703–681–1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exceptional Family Member Program (EFMP) Pilot Program Evaluation at Travis Air Force Base Survey; OMB Control Number 0720–EFMP.

Needs and Uses: David Grant Medical Center is taking part in a pilot program for EFMP family members. The goal of this pilot program is to connect EFMP families with quality medical and non-medical resources to support and care for their family members. In this pilot program, EFMP family members at David Grant are being provided with “Care Maps” that identify resources tailored to their diagnoses. The intent of this web-based survey is to solicit feedback on the efficacy and usefulness of these resources, as well as feedback from EFMP families at David Grant that have not received specialized maps to understand their experience in obtaining EFMP care without said resources. These results will be used as part of a larger evaluation of this pilot program, and actions may be taken to continue development of the pilot program, terminate the pilot program, as well as used to identify areas of opportunity to better support EFMP families based on the feedback and insight collected about their current experience and challenges.

Affected Public: Individuals or households.

Annual Burden Hours: 183.

Number of Respondents: 1,000.

Responses per Respondent: 1.

Annual Responses: 1,000.

Average Burden per Response: 11 minutes.

Frequency: On occasion.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–23139 Filed 10–19–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD–2023–HA–0104]****Proposed Collection; Comment Request**

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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 <https://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 Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703–681–1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Restructure or Realignment of Military Medical Treatment Facilities; OMB Control Number 0720–RMTF.

Needs and Uses: The National Defense Authorization Act for Fiscal Year (FY) 2017 (NDAA FY 2017—Pub. L. 114–328), Section 703 “Military Medical Treatment Facilities” states that there shall be an update on the study (*i.e.*, a report) from the 2015 Military Health System Modernization Study that addresses the realignment or restructuring of military medical treatment facilities (MTFs). As part of the report on the implementation plan to restructure or realign all MTFs, this survey will provide valuable data on TRICARE beneficiary's experience with the transition from receiving their care at an MTF to now receiving care in the private-sector with a network provider/facility.

The collection of this information will be from TRICARE Prime enrollees empaneled at MTFs undergoing MTF restructuring as a result of NDAA FY 2017, Section 703. The survey will be given two times, the first iteration given two weeks after transition to collect immediate information regarding the transition and access to care experience; a second survey will be released six months after transition to review progress. These TRICARE Prime enrollees will be responding to questions relating to how their transition from the MTF to either a Network (private-sector care) primary care manager (PCM) or TRICARE Select resulted. This information will assist the DHA with assessing this restructuring effort as well as future efforts to ensure beneficiaries receive high-quality care. Specifically, survey findings will show what problems beneficiaries faced during the transition from their MTF PCM to a network PCM, details on access to care now with a network PCM, satisfaction with their new network PCM, and communications about the transition overall.

Affected Public: Individuals or households.

Annual Burden Hours: 17,700.

Number of Respondents: 53,100.

Responses per Respondent: 2.

Annual Responses: 106,200.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–23143 Filed 10–19–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD–2023–OS–0027]****Submission for OMB Review; Comment Request**

AGENCY: Office of the Under Secretary of Defense for Policy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Policy Pulse Survey, OMB Control Number 0704–0570.

Type of Request: Revision.

Number of Respondents: 198.

Responses per Respondent: 2.

Annual Responses: 396.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 99.

Needs and Uses: The information collection requirement is necessary to obtain and record responses from contractor personnel employed within the Office of the Under Secretary of Defense for Policy and its components. The survey results are analyzed by the Leadership and Organizational Development Office to assess the progress on current human capital strategy and training issues.

Affected Public: Individuals or households.

Frequency: Semi-annually.
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: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-23145 Filed 10-19-23; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2023-HA-0103]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 2023.

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: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

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 Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703-681-1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: United States Army Medical Research Institute of Infectious Diseases (RIID) Incoming Workforce Personnel Data Sheet; OMB Control Number 0720-RIID.

Needs and Uses: The Incoming Workforce Personnel Data Sheet is being used for basic workforce (WF) tracking. It is entered into the United States Army Medical Research Institute of Infectious Diseases (RIID) system of record (*i.e.*, WF System) for its combined workforce which comprises of Federal employees, active duty service members, contractors, and external workers (*i.e.*, other agency personnel, interns, volunteers, etc.). The collected information is used to track basic personnel data (*i.e.*, name, work email, division, supervisor, etc.), facilitate workflows and processes needed to maintain such data, and provide methods that integrate the individuals' organizational related data (*i.e.*, workforce type, work email, office location, division, supervisor, etc.) with

other internal functions/systems. The application housing this information will not be accessible via mobile means and will be protected behind a firewall that is only accessible when connected to the organization's local area network (LAN). The application will be solely owned and operated by the organization.

The recipient either (1) completes the data sheet or (2) provides the requested information in-person at the time of in-processing. If the document is prepared in advance to in-processing, it is either submitted by their employer (*i.e.*, contract company) or by themselves via a secured means of transmission (*i.e.*, encrypted email) or in-person (*i.e.*, hand-delivered) at the time of their in-processing.

Affected Public: Individuals or households.

Annual Burden Hours: 4.2.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 5 minutes.

Frequency: As required.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-23137 Filed 10-19-23; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2023-HA-0105]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

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 <https://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 Technology Transfer Office, 59MDW/ST 1632 Nellis, Bldg. 5406, JBSA Lackland, TX 78236, Dr. Scott Walter, 210-292-7210.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Fielding Successful Medical Products Survey; OMB Control Number 0720-VOIP.

Needs and Uses: Companies use multiple strategies, funding streams, and tactics to field medical products that the military can use in the Military Health System (MHS) and military operations. Little is known about the critical factors affecting medical product research, development, and acquisition by the DoD. This gap in knowledge hinders the DoD's ability to effectively influence the commercial development of life-saving medical technologies and impedes the DHA's and Services' advanced development functions.

As part of 59th Medical Wing's Science & Technology, Technology Transfer and Transition (59 MDW/ST-T3) Office's continuous process improvement effort, this proposed information collection will gather feedback from companies that have successfully developed and marketed

commercially-available medical products to the DoD over the last five (5) years. The questionnaire elicits information about (a) funding streams, processes, ideas, partnerships, and pathways, (b) Food & Drug Administration (FDA) approval/clearance, (c) teaming arrangements, management strategies, and leadership approaches, and (d) barriers and enablers to marketing to the DoD.

By performing this market analysis, we aim to develop actionable, data-driven recommendations for improving acquisition of innovative medical solutions. An analysis of responses permits a clear understanding of how the DoD can influence, emulate, and facilitate successful production and provisioning of new/novel medical products (capabilities) to address existing requirements or enhance existing medical/health capabilities. Specifically, this effort will support the DHA's mission of driving innovative solutions to improve health and build readiness.

Affected Public: Individuals or households.

Annual Burden Hours: 25.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-23144 Filed 10-19-23; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2023-HA-0101]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 2023.

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: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

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 Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703-681-1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Certificate of Death; DD Form 2064; OMB Control Number: 0720-COFD.

Needs and Uses: DD 2064, Certificate of Death, is used by family members of deceased DoD employees and contractors to settle estates, insurance claims, and other post death related matters. The form is also used by the DoD to track the cause and manner of death of service members, federal employees, as well as their family members and dependents when a death occurs outside the continental United States (OCONUS). DD 2064 generates a death certificate that is accessible to next-of-kin. The form is also used by OCONUS hospitals and allows for the transportation of human remains. In

addition to the DD 2064, a Death Certificate Information Sheet is completed to gather additional related information. This collection of information is authorized by 10 U.S.C. 1471, "Forensic Pathology Investigations"; 10 U.S.C. 1509, "Program to Resolve Missing Persons Cases"; and DoD Instruction 5154.30, "Armed Forces Medical Examiner System (AFMES) Operations."

AFMES is a government-developed system that provides medical examiners the ability to track and record autopsy and consultation information. Information is pushed from the Defense Casualty Information Processing System (DCIPS) in to AFMES. If needed, additional information required to complete the DD 2064 may be collected by medical legal death investigators. This information may be collected from the deceased's next-of-kin or workplace over the phone or via email. The additional collected information is recorded into AFMES. To generate a DD 2064, the aggregate collected information contained within AFMES is synthesized electronically to fill respective fields on the DD 2064. This form is signed by the examining pathologist. The completed and signed document is retained within AFMES. Depending on circumstances, the completed DD 2064 is sent to the deceased's next-of-kin, the designated funeral home, or the branch casualty office by Federal Express Certified Mail. If the deceased was a member of the military at the time of death, the DD 2064 may be downloaded by the service casualty offices who will print out copies to disseminate as required.

Affected Public: Individuals or households.

Annual Burden Hours: 170.

Number of Respondents: 170.

Responses per Respondent: 1.

Annual Responses: 170.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-23133 Filed 10-19-23; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical Malpractice Claims by Members of the Uniformed Services; Notice of Increase in Cap on Non-Economic Damages

AGENCY: Department of Defense Office of General Counsel, DoD.

ACTION: Notice of increase in cap on noneconomic damages.

SUMMARY: This notice provides information on the increase in the cap on non-economic damages for DoD medical malpractice claims filed by members of the Uniformed Services.

DATES: The increased cap is effective October 20, 2023.

FOR FURTHER INFORMATION CONTACT:

Melissa D. Walters, (703) 681-6027, melissa.d.walters.civ@mail.mil.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on August 22, 2022 (87 FR 52446-52463), 32 CFR 45.10(c), requires the Department of Defense to publish periodic updates to the cap on non-economic damages, consistent with changes in the prevailing amounts in the States with non-economic damages caps.

The cap on non-economic damages is increased from \$600,000 to \$750,000. This change reflects changes in State law, including changes in those States that periodically increase their damages cap to reflect inflation, and to account for average jury verdicts in those states that have caps on non-economic damages that do not apply in cases of more serious injury.

Dated: October 12, 2023.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-23014 Filed 10-19-23; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2023-HQ-0018]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Navy Office of Force Resiliency 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 December 19, 2023.

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: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

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 Navy Survey Program Office, 701 S Courthouse Road, Arlington, VA 22204, ATTN: Dr. Richard Linton, or call 703-604-6058.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy LivingWorks Program Surveys; OMB Control Number: 0703-LWRK.

Needs and Uses: Information collection is necessary to evaluate the LivingWorks suicide prevention training program, supporting the mission of the Department of the Navy (DON) Office of Force Resiliency (OFR) to provide oversight of Navy and Marine Corps programs. OFR is utilizing three surveys to conduct the training program

evaluation. Two surveys will evaluate the knowledge and opinions of trainees before and after training. The final survey will be conducted annually and target trained personnel once they are out in the fleet. The survey findings will be utilized internally to inform future trainings and policy, close identified gaps in knowledge, and more effectively reach command personnel trained in suicide prevention and responsible for promoting a comprehensive approach to improving command climate. The surveys will also help determine the efficacy of the LivingWorks program and if it is the best use of DON resources based on the outcomes and return on investment.

Affected Public: Public is not affected by this collection; it is internal to the Navy.

Annual Burden Hours: 750.

Number of Respondents: 1,500.

Responses per Respondent: 3 in the first year, 1 in subsequent years.

Annual Responses: 4,500.

Average Burden per Response: 10 minutes.

Frequency: Three times in the first year, annually thereafter.

Dated: October 16, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-23132 Filed 10-19-23; 8:45 am]

BILLING CODE 6001-FR-P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting; November 8 and December 6, 2023

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, November 8, 2023. A business meeting will be held the following month on Wednesday, December 6, 2023. Both the hearing and the business meeting are open to the public and both will be conducted remotely. Details about the remote platforms for the public hearing and the business meeting will be posted on the Commission's website, www.drbc.gov, at least ten days prior to the respective hearing and meeting dates. Both events will be streamed live on the Commission's YouTube channel.

Public Hearing. The Commission will conduct the public hearing virtually on November 8, 2023, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water

resources. A list of the projects scheduled for hearing, including project descriptions, along with links to draft docket approvals, will be posted on the Commission's website, www.drbc.gov, in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on November 8, 2023 will be accepted through 5:00 p.m. on Tuesday, November 14, 2023.

The public is advised to check the Commission's website periodically during the ten days prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review. Items also may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Business Meeting. The business meeting on December 6, 2023 will begin at 10:30 a.m. and will include: adoption of the Minutes of the Commission's September 7, 2023 business meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required. The agenda is expected to include consideration of the draft dockets for withdrawals, discharges, and other projects that were subjects of the public hearing on November 8, 2023.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission off the record on any topic concerning management of the basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the December 6, 2023 business meeting on items for which a hearing was completed on November 8, 2023 or a previous date. Commission consideration on December 6, 2023 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already

received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Registration and Sign-Up for Oral Comment. Links for registration to attend the public hearing and the business meeting will be posted at www.drbc.gov at least ten days before each meeting date. Registrants who wish to comment on the record during the public hearing on November 8, 2023 or to address the Commissioners informally during the Open Public Comment session following the meeting on December 6, 2023 as time allows, will be asked to so indicate when registering. The Commission's public hearing, business meeting, and Open Public Comment session will also be livestreamed on YouTube at https://www.youtube.com/@DRBC_1961. For assistance, please contact Ms. Patricia Hausler of the Commission staff, at patricia.hausler@drbc.gov.

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at www.drbc.gov. Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628-0360. For assistance, please contact Patricia Hausler at patricia.hausler@drbc.gov.

Accommodation for Special Needs. Closed captioning will be available on both webinar and live-stream platforms. Those with limited internet access may listen and speak at virtual public meetings of the DRBC using any of several toll-free phone numbers that will be provided to all virtual meeting registrants.

Individuals in need of the accommodations as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Donna Woolf, 609-883-9500, ext. 222. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager, at 609-883-9500, ext. 264.

Authority. Delaware River Basin Compact, Public Law 87–328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: October 11, 2023.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2023–23157 Filed 10–19–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0183]

Agency Information Collection Activities; Comment Request; Evaluation of a Toolkit To Support Evidence-Based Writing Instruction in Grades 2 Through 4

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 19, 2023.

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–2023–SCC–0183. 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 [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department 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 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 Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Heidi Gansen, (202) 245–6765.

SUPPLEMENTARY INFORMATION: The Department, 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. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of A Toolkit to Support Evidence-Based Writing Instruction in Grades 2 Through 4.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public:

Individuals or households.

Total Estimated Number of Annual Responses: 4,176.

Total Estimated Number of Annual Burden Hours: 1,234.

Abstract: The Institute of Education Sciences (IES) within the U.S. Department of Education (ED) requests clearance for data collection activities to support an evaluation of A Toolkit to Support Evidence-Based Writing Instruction in Grades 2 Through 4. Specifically, this request covers collection of data to conduct an evaluation to assess whether implementing the writing toolkit (1) improves teachers' attitudes towards writing and helps them align their writing instruction with the evidence-based recommendations in the What Works Clearinghouse (WWC) Teaching Elementary School Students to Be Effective Writers practice guide and (2) improves students' writing quality and reading achievement. This randomized controlled trial study will compare teacher and student outcomes in schools

that implement the writing toolkit (the treatment group) with the teacher and student outcomes in schools that continue to provide their usual professional development supports (the comparison group).

There is a great need for professional learning supports in elementary writing instruction to address low reading and writing proficiency across the country. Teacher preparation programs rarely offer stand-alone writing instruction (Myers et al. 2016; Morgan 2010; Brenner 2013), and surveys show many teachers and teacher educators do not feel confident in writing instruction (Myers et al. 2016; Cutler and Graham 2008). An accessible package of professional learning materials designed to help educators translate evidence-based recommendations for elementary writing instruction into daily instruction could be a game-changer for improving teacher practice and student writing.

The elementary writing toolkit aims to offer such an accessible, evidence-based professional learning package by drawing on the WWC Teaching Elementary School Students to Be Effective Writers practice guide. The practice guide helps to fill the professional development gaps for elementary writing instruction by providing clear, actionable recommendations along with specific implementation steps and examples. The toolkit will build on the practice guide to (1) make the recommendations and implementation guidance accessible and engaging for busy educators, (2) create a structure for learning and applying practices throughout a school year, (3) promote collaborative learning and planning among teachers, and (4) offer tools for sustaining practices over time. The toolkit will be a one-stop shop that enables schools and educators to access all supports in one place, complemented by diagnostic tools to assess practices and resources for school leaders to institutionalize practices over time. Incorporating multimedia resources that are easy to navigate will make the toolkit more inviting and will facilitate the reinforcement of concepts that are difficult to learn through text alone.

To provide context for the impact findings and inform further development of the toolkit, the evaluation will examine teachers' experiences and engagement in toolkit activities, the learning modules completed, challenges encountered and suggested solutions, feedback on areas to improve the toolkit and institutional supports, and the extent to which the professional development in writing

instruction received by teachers differs between treatment and control schools. Obtaining feedback on improving the toolkit, regardless of whether the impact findings are positive, is critical to ensure that the toolkit is as useful as possible to districts, schools, and teachers when they implement the evidence-based practices.

Dated: October 17, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-23152 Filed 10-19-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket ID ED-2023-IES-0146]

Privacy Act of 1974; System of Records

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a new system of records titled "Connecting Adults to Success: Evaluation of Career Navigator Training" (18-13-46). This system contains personally identifiable information provided by adult learners and staff at adult education sites who participate in the Connecting Adults to Success: Evaluation of Career Navigator Training (the Study). The information in this system will be used to assess whether providing career navigators with training leads to improved education and employment outcomes among adult learners. The Study will examine whether outcomes measured at 18 and 30 months after beginning participation in the Study differ on average between learners in the Study's sites who are assigned by lottery to receive the Study's career navigator training and learners in the Study's sites who are assigned by lottery to a control group.

DATES: Submit your comments on this notice of a new system of records on or before November 20, 2023. This new system of records will become applicable upon publication in the **Federal Register** on October 20, 2023, unless it needs to be changed as a result of public comment. The routine uses outlined in the section titled "ROUTINE

USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES" will become effective on the expiration of the 30-day period of public comment on November 20, 2023, unless they need to be changed as a result of public comment. The Department will publish any significant changes to the system of records or routine uses resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [regulations.gov](https://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- **Federal eRulemaking Portal:** Go to www.regulations.gov to submit your comments electronically. Information on using [Regulations.gov](https://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the "FAQ" tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Teresa Cahalan, SORN coordinator, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4126, Washington, DC 20202. Telephone: 202-245-7299. Email: IES_SORN@ed.gov.

If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The records maintained in this system will be used to measure the effectiveness of training for career navigators in improving the education and employment outcomes of adult learners.

The records maintained in this system will be used to address the following research questions:

- Can providing training to career navigators improve adult learners' college enrollment and credential attainment rates?
- Can providing training to career navigators improve adult learners' employment rates and earnings?
- What types of services do career navigators typically provide, and does the training provided to career navigators change the nature or intensity of such services in ways that explain any impacts on adult learners' postsecondary and employment outcomes?

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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, 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.

Mark Schneider,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences (IES), U.S. Department of Education (Department),

publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Connecting Adult to Success:
Evaluation of Career Navigator Training
(18–13–46).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

Institute of Education Sciences, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202. (This is the location of the IES Data Center.)

Mathematica Policy Research, Inc., 600 Alexander Park, Princeton, NJ 08540–6346 (contractor). (Mathematica will collect personally identifiable information regarding staff and adult learners at participating adult education sites and store these records until uploaded through secure transfer to the IES Data Center.)

SYSTEM MANAGER:

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is authorized under 29 U.S.C. 3332(b) and (c) (sections 242(b) and 242(c) of title II of the Workforce Innovation and Opportunity Act (Pub. L. 113–128)) and section 173 of the Education Sciences Reform Act of 2002 (ESRA) (Pub. L. 107–279). The collection of Social Security numbers (SSNs) is authorized under Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The records maintained in this system will be used to measure the effectiveness of training for career navigators in improving the education and employment outcomes of adult learners. The records maintained in this system will be used to address the following research questions:

- Can providing training to career navigators improve adult learners' college enrollment and credential attainment rates?
- Can providing training to career navigators improve adult learners' employment rates and earnings?
- What types of services do career navigators typically provide, and does the training provided to career navigators change the nature or intensity of such services in ways that explain any impacts on adult learners' postsecondary and workforce outcomes?

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will maintain records on career navigators and adult learners from across 64 adult education provider sites. The adult education provider sites will be recipients of funds under the Department's adult education formula grant program that volunteer to participate in the Connecting Adults to Success: Evaluation of Career Navigator Training (the Study) and that meet the Study's selection criteria including that they employ career navigators, do not already provide training to such navigators that is similar to the Study's training, and routinely collect SSNs from learners as part of program intake.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system on career navigators include, but are not limited to, name; email address; work and training experience; education background; demographic information such as race, age, ethnicity, and gender; types and intensity of career navigation services that the navigator provides; records of the navigator's participation in the Study's training; and the navigator's perceptions of the Study's training.

Records maintained in this system on adult learners include, but are not limited to, name; mailing address; email address; date of birth; SSN; work experience; education background; English learner status; demographic information such as race, ethnicity, and gender; course enrollment at the adult education site; participation in career navigation services; performance on tests of basic literacy skills; educational attainment; and employment and earnings.

RECORD SOURCE CATEGORIES:

Data in this system will be obtained through student records maintained by the adult education providers; surveys of adult learners, career navigators, and adult education site directors; and the administrative records of the National Student Clearinghouse, high school equivalency test vendors, the U.S. Department of Health and Human Services' National Directory of New Hires, and the Department's Office of Federal Student Aid.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the

purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), under a computer matching agreement. Any disclosure of personally identifiable information from a record in this system must also comply with the requirements of section 183 of ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES. Any disclosure of personally identifiable information from student education records that were obtained from school districts must also comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99), which protects the privacy of student education records.

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to maintain safeguards to protect the security and confidentiality of the records in the system.

(2) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to the functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must agree to safeguards, consistent with section 183(c) of ESRA (20 U.S.C. 9573(c)), to protect the security and confidentiality of the records disclosed from this system. If the Department discloses personally identifiable information from a student's education record covered by FERPA to the researcher, the researcher also must agree to comply with applicable FERPA requirements.

(3) *Obtaining Participants' Academic and Employment Records.* The Department may disclose records from this system of records to the National Student Clearinghouse, testing vendors for high school equivalency credentials, and the U.S. Department of Health and Human Services in order to obtain

participants' academic and labor records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Department maintains secured, password-protected records on the IES Data Center, and the Department's contractor, Mathematica Policy Research, Inc., maintains records for this system on the Department's behalf on secured, password-protected computer systems and in hard copy form until uploaded to the IES Data Center. Hard copy records will be kept in locked file cabinets during nonworking hours and work on hard copy records will take place in a single room, except for data entry.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are indexed by a unique number assigned to each individual, which can be cross-referenced when needed (such as for data matching) with the separately stored direct identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department has submitted a retention and disposition schedule that is intended to cover the records contained in this system to the National Archives and Records Administration (NARA) in June 2022 for NARA's review. The records will not be destroyed until such a time as NARA approves said schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security protocols for this system of records meet all required security standards. All physical access to the Department's site and to the site of the Department's contractor, where this system of records is also maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention with the use of firewalls, encryption, and password protection. This system limits data access to Department and contract staff on a need-to-know basis and controls individual users' ability to access and alter records within the system. The contractor will establish a similar set of procedures at its site to ensure the confidentiality of data. The contractor's systems are required to ensure that personally identifiable information is in files physically separated from other research data. The contractor will maintain security of the complete set of all master data files. Access to personally identifiable information will

be strictly controlled. Access to information by contractor staff will be granted on a need-to-know basis, and individual staff's ability to alter records within the system will be controlled.

Security features that protect project data include: password-protected accounts that authorize users to use the contractor's system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record in this system, contact the system manager at the address listed above. Your request must provide necessary particulars of your full name, address, telephone number, and any other identifying information requested by the Department, to distinguish between individuals with the same name. Your request must meet the requirements of regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you, you must contact the system manager at the address listed above. Requests must contain your full name, address, and telephone number. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you, you must contact the systems manager at the address listed above. Your request must provide necessary particulars, such as your full name, address, telephone number, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of regulations at 34 CFR 5b.5.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2023-23164 Filed 10-19-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0096]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Full-Service Community Schools Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before November 20, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jane Hodgdon, 202-245-6057.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Full-Service Community Schools Annual Performance Report.

OMB Control Number: 1810–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 900.

Abstract: The collection of this information is part of the government-wide effort to improve the performance and accountability of all federal programs, under 34 CFR 75.210, the Uniform Guidance, and the Education Department General Administrative Regulations (EDGAR). The U.S. Department of Education (ED) developed performance measures at every program level to quantify and report program progress required by the Elementary and Secondary Education Act of 1965 (ESEA), as amended. Under the Uniform Guidance and EDGAR, recipients of federal awards are required to submit performance and financial expenditure information. The program-level performance measure (established under Section 4625(4)(C) of the Elementary and Secondary Education Act of 1965, as amended), the 13 additional program indicators (established through a Notice of Final Priorities, Requirements, Definitions, and Selection Criteria (NFP) published in the **Federal Register** on July 13, 2022 (87 FR 41675)), and budget information for the Full-Service Community Schools (FSCS) Program are reported in the Annual Performance Report (APR). The APR is required under 2 CFR 200.328 and 34 CFR 75.118 and 75.590. It provides data on the status of funded projects that correspond to the scope and objectives established in the approved applications and any amendments. To ensure that accurate and reliable data are reported to Congress on program implementation and performance outcomes, the FSCS APR collects data from grantees in a consistent format to calculate these data in the aggregate.

Dated: October 17, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–23271 Filed 10–19–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2023–005; EERE–2023–BT–WAV–0018]

Energy Conservation Program: Notification of Petition for Waiver of Johnson Controls Inc. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure and Notification of Grant of Interim Waiver

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

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notification announces receipt of and publishes a petition for waiver and interim waiver from Johnson Controls Inc. (“JCI”), which seeks a waiver for specified basic models of central air conditioners (“CACs”) and central air conditioning heat pumps (“HPs”) (collectively, “CAC/HPs”) from the U.S. Department of Energy (“DOE”) test procedure used for determining the efficiency of CAC/HPs. According to JCI, testing its CAC/HP basic models that use variable-speed, oil-injected scroll compressors with only a 20-hour break-in period produces results unrepresentative of their true energy consumption characteristics, and would provide materially inaccurate comparative data. JCI requested that in lieu of the 20-hour break-in limit, it be permitted to test the specified CAC/HP basic models with a 72-hour break-in period. DOE also gives notification of an Interim Waiver Order that requires JCI to test and rate the specified CAC/HP basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning JCI’s petition and its suggested alternate test procedure so as to inform DOE’s final decision on JCI’s waiver request.

DATES: Written comments and information are requested and will be accepted on or before November 20, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE–2023–BT–WAV–0018. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2023–BT–WAV–0018, by any of the following methods:

(1) *Email:* JohnsonControlsCACHP2023WAV0018@ee.doe.gov. Include the case number [Case No. 2023–005] in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver [Case No. 2023–005], 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

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

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

The docket web page can be found at www.regulations.gov/docket/EERE-2023-BT-WAV-0018. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See below for information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

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

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: Peter.Cochran@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE is publishing JCI's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv).¹ DOE is also publishing the Interim Waiver Order granted to JCI, which serves as notification of DOE's determination regarding JCI's petition for an interim waiver, pursuant to 10 CFR 430.27(e)(3). DOE invites all interested parties to submit in writing by November 20, 2023, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Chris Forth, chris.m.forth@jci.com, Johnson Controls Inc., 3110 N Mead St. Wichita, KS 67219.

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

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

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

the information submitted. For information on submitting CBI, see the Confidential Business Information section.

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

Submitting comments via email, hand delivery/courier, or postal mail.

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

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

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

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

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential

including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

Case Number 2023-005

Interim Waiver Order

I. Authority and Background

The Energy Policy and Conservation Act, as amended ("EPCA"),² authorizes the U.S. Department of Energy ("DOE") to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA³ established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include CAC/HPs, the subject of this document. (42 U.S.C. 6292(a)(3))

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

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

² All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

³ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

¹ The petition did not identify any of the information contained therein as confidential business information.

product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for CAC/HPs is contained in the Code of Federal Regulations (“CFR”) at 10 CFR part 430, subpart B, appendix M1, *Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps* (“appendix M1”).

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE’s test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics of the basic model. 10 CFR 430.27(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l) As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a

determination on the underlying petition for waiver. 10 CFR 430.27(e)(3). Within one year of issuance of an interim waiver, DOE will either: (i) publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

If the interim waiver test procedure methodology is different than the decision and order test procedure methodology, certification reports to DOE required under 10 CFR 429.12 and any representations must be based on either of the two methodologies until 180 days after the publication date of the decision and order. Thereafter, certification reports and any representations must be based on the decision and order test procedure methodology, unless otherwise specified by DOE. 10 CFR 430.27(i)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver or interim waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 429.27(h)(3).

II. JCI’s Petition for Waiver and Interim Waiver

On July 12, 2023, DOE received from JCI a petition for waiver and interim waiver from the test procedure for CAC/HPs set forth at 10 CFR part 430, subpart B, appendix M1.⁴ (JCI, No. 1 at pp. 1–10)⁵ Pursuant to 10 CFR 430.27(e)(1), DOE posted the petition on the DOE website at: www.energy.gov/eere/buildings/current-test-procedure-waivers. The petition did not identify any of the information contained therein as confidential business information.

According to JCI, testing its CAC/HP basic models that use variable-speed, oil-injected scroll compressors (“VSS systems”) with only a 20-hour break-in period produces results unrepresentative of their true energy consumption characteristics, and would provide materially inaccurate comparative data. (JCI, No. 1 at p. 1) JCI requested that in lieu of the 20-hour break-in limit, it be permitted to test its

VSS systems with a 72-hour break-in period. *Id.* Consequently, JCI seeks to use an alternate test procedure to test and rate specific CAC/HP basic models, which increases the break-in time limit stipulated in section 3.1.7 of appendix M1. *Id.*

On March 23, 2018, DOE granted JCI a waiver from DOE’s then effective CAC/HP test procedure⁶ for these same basic models of VSS systems, permitting them to test with a 72-hour break-in period. 83 FR 12735. DOE notes that the alternative test procedure requested by JCI in this waiver petition for appendix M1 is identical to the alternative test procedure included in the waiver it previously obtained under appendix M.

JCI also requested an interim waiver from the existing DOE test procedure, noting that DOE previously granted JCI an interim waiver under appendix M regarding the allowable break-in period for these same models in 2017.⁷ (JCI, No. 1 at pp. 7–8) Absent an interim waiver, JCI asserted that its VSS systems will continue to be at a competitive disadvantage on the market and consumers will continue to be exposed to materially inaccurate information about the energy consumption characteristics of its VSS systems. *Id.* As the circumstances surrounding JCI’s request for an interim waiver and the products and models subject to the waiver have not changed, JCI asserted that an identical interim waiver is warranted. *Id.* DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(e)(3).

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered products. (42 U.S.C. 6293(c)) Consistency is important when making representations about the energy efficiency of covered products, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 430.27, and after consideration of public comments on the petition, DOE

⁴ The specific basic models identified by JCI can be found in the docket at www.regulations.gov/docket/EERE-2023-BT-WAV-0018 and is provided at the end of this document.

⁵ A notation in this form provides a reference for information that is in the docket for this test procedure waiver (Docket No. EERE–EERE–2023–BT–WAV–0018) (available at www.regulations.gov/document/EERE-2023-BT-WAV-0018-0001). This notation indicates that the statement preceding the reference is document number 1 in the docket and appears at pages 1–10 of that document.

⁶ On January 1, 2023, use of appendix M1 became required for any representations—including compliance certifications—made with respect to the energy use, power, or efficiency of CAC/HPs. Prior to January 1, 2023, such representations were required to be based on the test procedure at appendix M to subpart B of 10 CFR part 430.

⁷ See 82 FR 43952 for DOE’s notification of petition and grant of interim waiver published on September 20, 2017.

may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

JCI seeks to use an alternate test procedure to test and rate specific CAC/HP basic models of VSS systems consistent with the waiver it previously obtained for these same basic models under appendix M.⁸ (JCI, No. 1 at pp. 6–7) In its petition, JCI proposed to test and rate its specified basic models according to the test procedure prescribed by DOE at 10 CFR part 430, subpart B, appendix M1, except that the 20-hour break-in period maximum in section 3.1.7 of appendix M1 be replaced with a 72-hour maximum. *Id.* Under JCI’s proposed alternative test procedure, the following language would be used instead of section 3.1.7 of appendix M1:

3.1.7 Test Sequence

Manufacturers may optionally operate the equipment under test for a “break-in” period, not to exceed 72 hours, prior to conducting the test method specified in this section. A manufacturer who elects to use this optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that are required to be maintained under 10 CFR 429.71. When testing a ducted unit (except if a heating-only heat pump), conduct the A or A₂ Test first to establish the cooling full-load air volume rate. For ducted heat pumps where the heating and cooling full-load

air volume rates are different, make the first heating mode test one that requires the heating full-load air volume rate. For ducted heating-only heat pumps, conduct the H1 or H1₂ Test first to establish the heating full-load air volume rate. When conducting a cyclic test, always conduct it immediately after the steady-state test that requires the same test conditions. For variable-speed systems, the first test using the cooling minimum air volume rate should precede the E_v Test, and the first test using the heating minimum air volume rate must precede the H2_v Test. The test laboratory makes all other decisions on the test sequence.

IV. Interim Waiver Order

DOE has reviewed JCI’s application for an interim waiver, the alternate test procedure requested by JCI, and the test data provided by JCI.

DOE tentatively agrees that the circumstances surrounding JCI’s request for an interim waiver and the products and models subject to the waiver have not changed since the granting of a similar waiver for testing to appendix M. Specifically, DOE has tentatively determined that the test data provided by JCI demonstrates that the specified VSS system models that are the subject of the waiver have compressors that may require more than the 20 hours of break-in time allowed by appendix M1. The oil injected into the oil-injected scroll compressors increases the coverage of the viscous oil layer between mating surfaces of the scroll. This is presumably its purpose, *i.e.*, to

provide additional sealing in the gaps of the mating surfaces to improve compressor volumetric efficiency (relationship between displacement rate and volume flow rate of refrigerant drawn into the compressor). By enhancing this oil layer, the direct contact between irregularities in the surfaces may also be reduced, which would slow the wearing process that smooths out these irregularities, which is the break-in process. For this reason, oil injected compressors are expected to require additional break-in time.

DOE understands that absent a waiver, JCI’s products cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has initially determined that the alternate test procedure appears to allow for the accurate measurement of the energy efficiency of the specified basic models, while alleviating the testing problems cited by JCI in implementing the DOE test procedure for these basic models. Consequently, DOE has determined that JCI’s petition for waiver likely will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant JCI immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *ordered* that:

(1) JCI must test and rate the following CAC/HP basic models that use certain variable-speed, oil-injected scroll compressors with the alternate test procedure set forth in paragraph (2).

	York	Coleman	Luxaire	Fraser-Johnston	Champion
Air Conditioners	YXV24B21	AC21B2421	AL21B2421	AL21B2421	AL21B2421
	YXV36B21	AC21B3621	AL21B3621	AL21B3621	AL21B3621
	YXV48B21	AC21B4821	AL21B4821	AL21B4821	AL21B4821
	YXV60B21	AC21B6021	AL21B6021	AL21B6021	AL21B6021
Heat Pumps	YZV24B21	HC20B2421	HL20B2421	HL20B2421	HL20B2421
	YZV36B21	HC20B3621	HL20B3621	HL20B3621	HL20B3621
	YZV48B21	HC20B4821	HL20B4821	HL20B4821	HL20B4821
	YZV60B21	HC20B6021	HL20B6021	HL20B6021	HL20B6021

(2) The alternate test procedure for the JCI basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for CAC/HPs prescribed by DOE at 10 CFR 430, subpart B, appendix M1 except that the maximum duration of the break-in period is increased from 20 hours to 72 hours, as detailed below. All other requirements of appendix M1 and DOE’s regulations remain applicable.

In 3.1.7, *Test Sequence*, test using these instructions:

Manufacturers may optionally operate the equipment under test for a “break-in” period, not to exceed 72 hours, prior to conducting the test method specified in this section. A manufacturer who elects to use this optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that are

required to be maintained under 10 CFR 429.71. When testing a ducted unit (except if a heating-only heat pump), conduct the A or A₂ Test first to establish the cooling full-load air volume rate. For ducted heat pumps where the heating and cooling full-load air volume rates are different, make the first heating mode test one that requires the heating full-load air volume rate. For ducted heating-only heat pumps, conduct the H1 or H1₂ Test first to

⁸ See 83 FR 12735.

establish the heating full-load air volume rate. When conducting a cyclic test, always conduct it immediately after the steady-state test that requires the same test conditions. For variable-speed systems, the first test using the cooling minimum air volume rate should precede the E_v Test, and the first test using the heating minimum air volume rate must precede the H_{2v} Test. The test laboratory makes all other decisions on the test sequence.

(3) *Representations.* JCI may not make representations about the efficiency of a basic model listed in paragraph (1) of this Interim Waiver Order for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Interim Waiver Order is issued on the condition that the statements, representations, test data, and documentary materials provided by JCI are valid. If JCI makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver

invalid with respect to that basic model, and JCI will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, JCI may request that DOE rescind or modify the Interim Waiver Order if JCI discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Issuance of this Interim Waiver Order does not release JCI from the applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. JCI may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CAC/HPs. Alternatively, if appropriate, JCI may request that DOE

extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signing Authority

This document of the Department of Energy was signed on October 16, 2023 by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 17, 2023.

Treena V. Garrett,

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

BILLING CODE 6450-01-P



Johnson Controls, Inc.
3110 N. Mead St. Wichita, KS 67219
Tel 316-239-2925 Fax 316-832-6598

July 7, 2023

VIA E-MAIL: AS_Waiver_Requests@ee.doe.gov

Mr. Lucas Adin
(cc. Ashley Armstrong)
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-5B
1000 Independence Avenue SW
Washington, DC 20585-0121

RE: Petition for Waiver and Interim Waiver of 20 Hour Break-In Period Limit for Certain JCI Central Air Conditioners and Heat Pumps with Variable Speed Compressors

Dear Mr. Adin:

Pursuant to 10 C.F.R. § 430.27, Johnson Controls, Inc. (JCI) respectfully submits this petition for waiver, and request for interim waiver, of the requirement in Section 3.1.7 of the test procedure for central air conditioners (CAC) and heat pumps (HP) found at Appendix M1 to Subpart B of 10 C.F.R. Part 430 that limits an optional compressor “break-in” period to a maximum of 20 hours before testing under Appendix M1 (the “20 Hour Break-In Limit”). Specifically, JCI seeks waiver of the 20 Hour Break-In Limit for its CACs and HPs with variable speed systems that use oil-injected scroll compressors (VSS systems), because testing these systems with only a 20-hour break-in period produces results unrepresentative of their true energy consumption characteristics, and would provide materially inaccurate comparative data.¹ JCI requests that in lieu of the 20 Hour Break-In Limit, it be permitted to test its VSS systems with a 72-hour break-in period.

In 2018, JCI obtained a waiver from the U.S. Department of Energy (DOE) from the break-in period limit of the then operative test procedure, which was found in Appendix M to Subpart B of 10 C.F.R. Part 430 for its CACs and HPs that use VSS systems.² Under the granted waiver, JCI was permitted to test its VSS systems with a 72-hour break-in period. As DOE is aware, while Appendix M1 replaced Appendix M effective January 1, 2023, Section 3.1.7 of the new test procedure remains unchanged. JCI also continues to manufacture and market the same types of CACs and HPs with VSS systems for which JCI previously obtained the waiver. For these reasons, JCI now seeks an identical waiver under Appendix M1 as the one it obtained under Appendix M. JCI also seeks an identical interim waiver under Appendix M1 as the one it obtained under Appendix M.

I. Johnson Controls, Inc.

Johnson Controls, Inc. is a diversified equipment and technology company with its operational headquarters in Milwaukee, Wisconsin and approximately 105,000 employees located around the globe. Our employees provide intelligent buildings, energy efficient solutions and

¹ Section 3.1.7 of Appendix M1 to Subpart B of 10 C.F.R. Part 430.

² 83 FR 12735.

integrated infrastructure to optimize energy efficiency and to create the smart buildings and communities of the future. Through its Residential & Light Commercial and Ducted Systems division, JCI manufactures and sells CAC and HP systems for residential use, including high efficiency variable speed systems. These products are manufactured in the United States, in Wichita, Kansas.

II. Background

A “break-in” period contemplates the running of equipment for a period of time before beginning of an efficiency test.³ DOE has found that a “break-in period is particularly important for scroll compressors, which may be less efficient when first started and may require time to warm up to achieve optimal performance. Once the compressor is broken in, the performance should be more representative of the actual field performance.”⁴ Break-in allows “mating” parts to wear against each other, which results in reduced friction and leakage. Until this initial wear has occurred, the moving parts in the compressor generate greater friction when they contact each other, which decreases efficiency, and the seals between chambers that compress or expand the refrigerant may have greater leakage between the chambers, which reduces efficiency. Oil injection technology improves system efficiency, but the oil in the scroll elements prolongs the time required for this initial wear, which is needed to achieve nominal efficiency.

Section 3.1.7 of Appendix M1 to 10 C.F.R. Part 430, Subpart B provides that the “break-in” period for operated equipment may not exceed 20 hours.

III. Basic Models for Which Waiver Is Requested

JCI requests a waiver from the 20 Hour Break-In Limit for its split-system CAC and HP basic models that use variable speed scroll compressors with an oil-injection system. Specifically, JCI requests waiver for the same models for which it previously requested a waiver, which are listed in Exhibit A.

The variable speed scroll compressors used in these systems are optimized for high-efficiency residential air conditioner and heat pump systems in the 2-ton to 5-ton range.

IV. Grounds for Test Procedure Waiver

JCI requests a waiver on the same grounds that it previously requested a waiver because the circumstances under which DOE granted the previous waiver have not changed. Specifically, JCI requests a waiver for the same products and models that were the subject of the previous waiver, the language in Section 3.1.7 of Appendix M1 to 10 CFR Part 430, Subpart B has not changed from Appendix M to Appendix M1, and JCI has the same reasons and need for this waiver as it did in the previous waiver. While other aspects of the test method have changed, none of those changes alter the amount of time required to break-in the compressor and deliver the performance customers would expect to see in the long term. For these reasons, JCI is relying on the same grounds (and the same testing data) as it did for its previously granted waiver, which are reproduced below:

DOE's regulations provide for granting of a test procedure waiver where testing of a basic model under the prescribed test procedures would “evaluate the basic model in a manner so

³ Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment, Proposed Rule, 77 FR 2355, 2374 (Jan. 17, 2012).

⁴ *Id.*

unrepresentative of its true energy . . . consumption characteristics as to provide materially inaccurate comparative data.”⁵ JCI seeks a waiver from the 20 Hour Break-In Limit for its VSS systems because limiting the optional break-in period to 20 hours results in testing that provides materially inaccurate data unrepresentative of the true energy efficiency characteristics of these systems.

JCI's VSS systems require significantly more than 20 hours of break-in to reach design efficiency, which is the level of efficiency that is representative of system performance over the lifetime of the VSS system, and would be more appropriately tested with a break-in period of 72 hours. DOE established the 20 hour Break-in Limit to reduce test variability,⁶ but because variable speed compressors with oil injection do not completely wear in within 20 hours, performance variability for VSS systems actually increases when break-in is limited to 20 hours. As explained below, JCI conducted testing demonstrating that a 20-hour break-in period does not allow for sufficient break-in for its VSS systems to reach representative efficiency, but that a 72-hour break-in period does.

JCI conducted baseline VSS system performance tests under Appendix M after 20 hours of break-in – the maximum permitted under Appendix M1.⁷ JCI then ran the same performance tests on the same units after longer break-in periods, of 44, 68, and 92 hours. JCI's testing shows that for the tested products, measured efficiency increased significantly with break-in periods longer than 20 hours. As is shown in the following sections, the Ev, B1, and F1 tests show substantial gains in efficiency with longer break-in periods.

Table 1 below shows testing data for a 3-ton air conditioning unit with a variable speed scroll compressor with oil injection tested after 20 hours of break-in. The unit was started at A2 conditions and instrumentation was verified before starting the A2 test with 20 hours of accumulated compressor run time. Completion of the A2 test was followed by the B2, B1, Ev, and F1 tests.

JCI then operated the test system for an additional 24 hours, for a total compressor run time of 44 hours, to determine if an increased break-in period improved performance. The results in Table 1 show the calculated SEER2 improved by 0.4 with this additional 24 hour period of break in. The most substantial gain was found in the EV and F1 tests.

Table 1: 3-ton AC System Testing, with 20 Hour Break-In and 44 Hour Break-in

Calorimeter 20 Hr Break-In Compressor							Increased Break-In Run ~ 24 Hours						
Test	ID Capacity	Watts	EER2	CFM	Static	ID Watts	Test	ID Capacity	Watts	EER2	CFM	Static	ID Watts
A2	35103	2778	12.6	1200	0.58	380	A2	35103	2735	14.0	1200	0.58	380
B2	37434	2425	15.4	1200	0.58	380	B2	37136	2402	17.1	1200	0.58	380
Ev	19223	1078	17.8	670	0.16	75	Ev	19162	1040	18.6	670	0.16	75
B1	10366	521	19.9	440	0.26	32	B1	10325	533	18.8	440	0.26	32
F1	11179	329	34.0	440	0.24	32	F1	11215	308	34.3	440	0.24	32
			SEER2	19.2					SEER2	19.6			

JCI then operated the test system for two more 24-hour break-in periods and collected system performance data after each break-in period. A second system was also installed into a psychrometric test cell and tested after the same intervals of compressor run time. As shown in Table 2, the performance data from both samples shows improvement after the first two additional 24-hour break-in periods, tapering off in the third 24-hour break-in period. With an additional 48 hours of break-in, there is an average of 8.5% improvement in SEER2 across both tests. Sample 1 improved from a

⁵ 10 C.F.R. § 430.27(a)(1).

⁶ Final Rule at 1445 (“[T]he establishment of the 20-hour limit is to maintain test repeatability among labs regardless of who conducts the test.”)

⁷ These test results are representative of the break-in characteristics of all models for which JCI seeks waiver herein.

SEER2 of 19.16 to 20.10 and sample 2 improved from a SEER2 of 18.44 to 20.81. This average gain of more than 1.0 SEER2 is significant in the current marketplace.

Table 2: 3-ton AC System Performance with Increasing Break-in Periods

Sample 1					Sample 2				
Test	20 Hr	44 Hr	68 Hr	92 Hr	Test	20 Hr	44 Hr	68 Hr	92 Hr
A2	12.64	12.83	12.80	12.91	A2	12.70	12.80	12.68	12.74
B2	15.44	15.46	15.54	15.65	B2	15.51	15.56	15.38	15.55
Ev	17.83	18.43	18.45	19.97	Ev	19.81	18.77	19.39	19.51
B1	19.89	19.37	21.70	21.84	B1	22.96	22.40	22.40	22.34
F1	34.00	36.47	36.95	38.00	F1	39.63	38.51	38.38	38.38
SEER2	19.16	19.56	20.10	21.24	SEER2	18.44	20.54	20.81	20.88

Additional unit sizes were tested using the same procedure as described above. As shown in Tables 3 and 4 below, results from those additional tests show the same pattern – increased efficiency with longer break-in periods beyond 20 hours.

Table 3: 4-ton AC System Performance with Increasing Break-in Periods

Sample 1					Sample 2				
Test	20 Hr	44 Hr	68 Hr	92 Hr	Test	20 Hr	44 Hr	68 Hr	92 Hr
A2	12.68	12.97	13.03	13.11	A2	12.89	13.15	12.92	12.88
B2	15.44	15.70	15.88	15.90	B2	15.92	15.95	15.83	15.68
Ev	18.39	18.90	18.99	19.09	Ev	19.16	19.21	19.03	19.56
B1	20.11	21.17	21.41	21.49	B1	21.40	20.43	20.27	21.95
F1	36.81	38.25	38.67	37.52	F1	35.44	37.51	36.10	38.86
SEER2	19.71	20.36	20.51	20.49	SEER	20.35	20.37	20.08	20.93

Table 4: 5-ton AC System Performance with Increasing Break-in Periods

Sample 1					Sample 2				
Test	20 Hr	44 Hr	68 Hr	92 Hr	Test	20 Hr	44 Hr	68 Hr	92 Hr
A2	12.70	12.75	12.76	12.84	A2	12.83	12.97	13.08	13.07
B2	15.49	15.52	15.60	15.71	B2	15.53	15.64	15.72	15.90
Ev	19.00	19.31	19.45	19.54	Ev	19.01	19.37	19.46	19.98
B1	22.32	23.32	24.03	24.26	B1	22.29	23.11	23.07	23.94
F1	36.36	38.35	38.76	38.82	F1	35.51	37.24	37.89	39.00
SEER2	20.50	21.07	21.35	21.48	SEER2	20.48	21.01	21.11	21.69

In evaluating this test data, JCI determined that the increase in system efficiency and reduced test variability that occurs with the lengthier break-in periods was principally due to a reduction in required compressor power during the test. Figures 5 and 6 show the decrease in compressor watts compared to the 20-hour baseline compressor for 3-ton and 5-ton AC systems. For both systems, results show a consistent reduction in watts consumed as the break-in time of the compressor is increased. This is most significant at the Ev, B1 and F1 test conditions.

Figure 5: Decrease in Compressor Watts (3 Ton AC) with 3 Additional 24-hour Break-In Periods, Relative to 20-hour Break-In Baseline

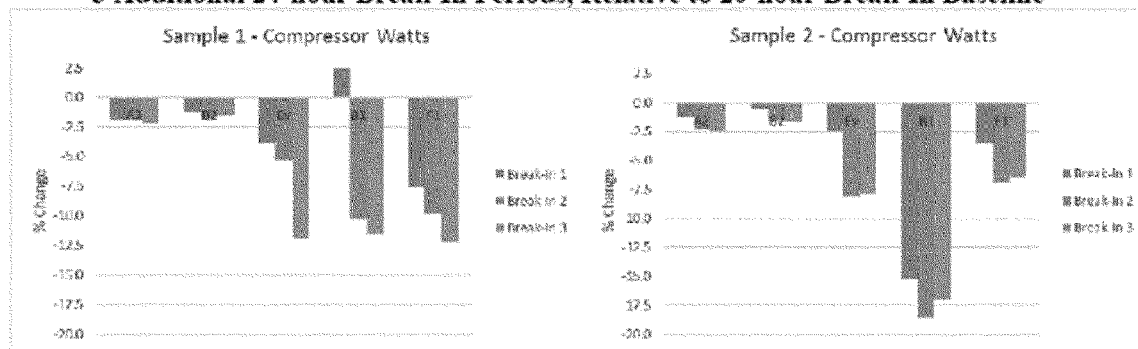
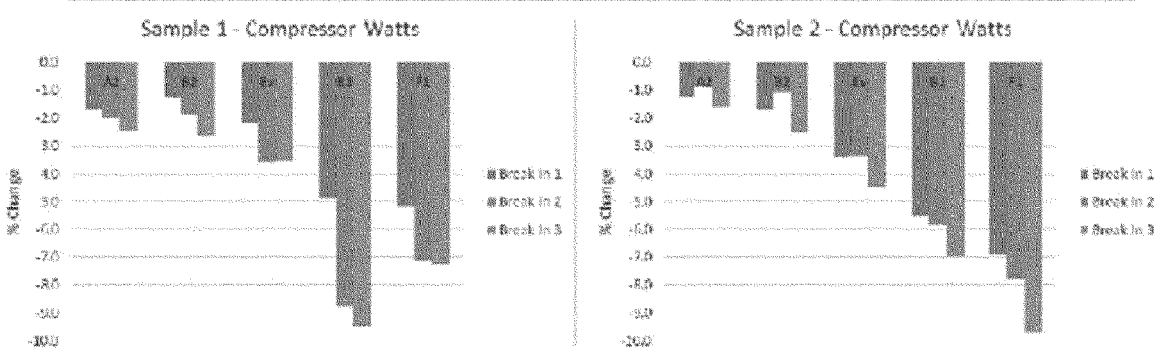


Figure 6: Decrease in Compressor Watts (5 Ton AC) with 3 Additional 24-hour Break-In Periods, Relative to 20-hour Break-In Baseline



These test results show that a VSS system is not fully broken in at 20 hours, and that rating such a system with only a 20-hour break-in period can understate a system's SEER2 rating performance by 1 to 2 SEER2 (or approximately 5% to 10%). Because the 20 Hour Break-In Limit does not allow sufficient time for full break-in of VSS systems, the efficiency rating of a VSS system measured under Appendix M1 falls below the actual efficiency level at which the system will operate for the great majority of its time in service. JCI is thus unable to represent, on the basis of Appendix M1 testing, the full efficiency at which its VSS systems will operate. To achieve a particular efficiency rating under the Appendix M1 test method, JCI is forced to overdesign its VSS systems to meet an even higher target efficiency rating after full break-in. In short, the 20 Hour Break-In Limit in Appendix M1 results in the underrating of JCI's VCC systems, and thus produces materially inaccurate data about the efficiency of VSS systems for comparison purposes, leaving homeowners without the information needed to objectively evaluate the benefits of such systems.

This underrating under Appendix M1 for JCI's VSS systems has significant consequences in the marketplace. Because of underrating due to the 20 Hour Break-In Limit, the full efficiency advantage of JCI's VSS systems will not be apparent versus lower-efficiency full stage compressor products, for which the 20 Hour Break-In Limit does not bias results. Consumers for whom central air conditioner measured efficiency is an important factor will be misled about the merits of VSS systems on the basis of measured efficiency under Appendix M1. Although the JCI models at issue are very efficient, and perform well above the applicable minimum efficiency standards, accurate ratings for high efficiency products such as these are important for purposes of, for instance, determining eligibility for Energy Star, utility rebates, tax credits, and green building recognition.

V. Alternative Test Procedures

DOE's Appendix M1 test procedure, as currently promulgated but with the option of an extended, 72-hour break-in period, constitutes the appropriate alternate test procedure that will evaluate the performance of JCI's VSS systems in a manner representative of its energy characteristics. Therefore, JCI proposes to test the basic models for which it seeks waiver by applying the entirety of Appendix M1 to 10 CFR Part 430, Subpart B, with a single modification to Section 3.1.7, as shown below:

3.1.7 Test Sequence

Manufacturers may optionally operate the equipment under test for a “break-in” period, not to exceed 20 72 hours, prior to conducting the test method specified in this section. A manufacturer who elects to use this optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that are required to be maintained under 10 CFR 429.71. When testing a ducted unit (except if a heating-only heat pump), conduct the A or A2 Test first to establish the cooling full-load air volume rate. For ducted heat pumps where the heating and cooling full-load air volume rates are different, make the first heating mode test one that requires the heating full-load air volume rate. For ducted heating-only heat pumps, conduct the H1 or H12 Test first to establish the heating full-load air volume rate. When conducting a cyclic test, always conduct it immediately after the steady-state test that requires the same test conditions. For variable-speed systems, the first test using the cooling minimum air volume rate should precede the EV Test, and the first test using the heating minimum air volume rate must precede the H2V Test. The test laboratory makes all other decisions on the test sequence.

Thus, the only substantive change would be to modify the maximum length of the optional break-in period for JCI's VSS systems. As required by Appendix M1, JCI would report the break-in period used in its product compliance certifications. The language proposed above is identical to the language proposed by JCI and accepted by DOE in 2018.

VI. Similar Products

The competitive market has not changed since JCI received the prior waiver. As a result, JCI is aware of the same, previously identified, manufacturers of residential central air conditioners and heat pumps that offer VSS systems using scroll compressors with oil injection: Carrier Corporation, Daikin Industries, Goodman Manufacturing Co. LP, Lennox International Inc., Nortek Global HVAC, Rheem Sales Company, and Trane.

VII. Petition for Interim Waiver

DOE granted JCI's previous interim waiver regarding the break-in period for the same products that are the subject of this interim waiver request. The circumstances surrounding JCI's request for an interim waiver and the products and models subject to the waiver have not changed. JCI subsequently seeks, pursuant to 10 CFR § 430.27, an identical interim waiver of the 20 Hour Break-In Limit for the JCI VSS systems.

DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.⁸ Interim relief is important to ensure that JCI can make materially accurate representations about the energy efficiency of its VSS

⁸ 10 C.F.R. § 430.27(e)(3).

systems in its certifications to DOE and marketing materials while DOE is considering the merits of JCI's petition for waiver.

Basic Models for Which a Waiver is Requested. JCI seeks an interim waiver for the models listed in Exhibit A.

Manufacturers of All Other Basic Models. JCI identified known similar products in Section VI, above.

Alternate Test Procedures. JCI identified alternate test procedures in Section V, above. JCI incorporates reference to those same test procedures for purposes of its interim waiver request.

Likely Success of the Petition for Waiver. For the reasons outlined above, JCI believes that there are strong arguments for granting the petition for waiver on the merits. Specifically, JCI testing of its VSS systems shows that a 72-hour break-in period produces test results that are more representative of the actual product efficiencies at which the VSS systems will operate over the lifetime of the product than those results obtained under the current 20 hour break-in period limit.

Competitive Disadvantage. If JCI must continue to comply with the 20 Hour Break-In Limit for its VSS systems, these systems will be disadvantaged in the market relative to other types central air conditioners and heat pumps for which a break-in period of 20 hours or less products results representative of actual operating efficiency. As shown above, the impact of the 20 Hour Break-In Limit on ratings is significant – it can reduce ratings by 1 to 2 SEER2. The effects of such depressed ratings in the market can be significant.

Public Policy Reasons to Grant Interim Waiver. Without an interim waiver, consumers will continue to be exposed to materially inaccurate information about the energy consumption characteristics of JCI's VSS systems. This inaccurate information harms consumers (especially those seeking to evaluate very high efficiency CAC/HP products) and distorts markets. Further, underrating high efficiency products is inconsistent with the policy objectives of EPCA.

For all of these reasons, DOE should grant an interim waiver while it considers the petition for waiver set out above.

VIII. Conclusion

For the reasons stated above, JCI respectfully requests that DOE grant this petition for waiver of the 20 Hour Break-In Limit with respect to its VSS systems. JCI further requests DOE to grant its request for an interim waiver while its petition for waiver is under consideration.

If you have any questions or would like to discuss this request, please contact me at (316) 832-6393. We greatly appreciate your attention to this matter.

Sincerely,

SAT

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EXHIBIT A

JCI Basic Models for Which Test Procedure Waiver Is Requested

	York	Coleman	Luxaire	Fraser-Johnston	Champion
AC	YXV24B21	AC21B2421	AL21B2421	AL21B2421	AL21B2421
	YXV36B21	AC21B3621	AL21B3621	AL21B3621	AL21B3621
	YXV48B21	AC21B4821	AL21B4821	AL21B4821	AL21B4821
	YXV60B21	AC21B6021	AL21B6021	AL21B6021	AL21B6021
HP	YZV24B21	HC20B2421	HL20B2421	HL20B2421	HL20B2421
	YZV36B21	HC20B3621	HL20B3621	HL20B3621	HL20B3621
	YZV48B21	HC20B4821	HL20B4821	HL20B4821	HL20B4821
	YZV60B21	HC20B6021	HL20B6021	HL20B6021	HL20B6021

[FR Doc. 2023-23205 Filed 10-19-23; 8:45 am]

BILLING CODE 6450-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24-3-000.
Applicants: Northern Illinois Gas Company.
Description: § 284.123(g) Rate Filing: Petition for Rate Approval to be effective 11/1/2023.
Filed Date: 10/13/23.
Accession Number: 20231013-5100.
Comment Date: 5 p.m. ET 11/3/23.
Protest Date: 5 p.m. ET 12/12/23.
Docket Numbers: RP24-41-000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Oct 13 2023) to be effective 10/13/2023.
Filed Date: 10/12/23.

Accession Number: 20231012-5095.

Comment Date: 5 p.m. ET 10/24/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: October 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-23126 Filed 10-19-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2023-012; FRL 10787-03-OAR]

California State Nonroad Engine Pollution Control Standards; Ocean-Going Vessels At-Berth; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency ("EPA") is granting the California Air Resources Board's ("CARB") request for authorization of

amendments to its Ocean-Going Vessels At-Berth regulation ("At-Berth Regulation"). CARB's At-Berth Regulation specifies auxiliary engine emission reduction requirements applicable to container, refrigerated, cargo, cruise, roll on-roll off (ro-ro), and tanker vessels (also emission reduction requirements to tanker vessel auxiliary boilers) while docked or "berthed" at specified marine terminals and ports in California. This decision is issued under the authority of the Clean Air Act ("CAA" or "Act").

DATES: Petitions for review must be filed by December 19, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA-HQ-OAR-2023-0152. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's website is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the www.regulations.gov website, enter EPA-HQ-OAR-2023-0152 in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality ("OTAQ") maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at: <https://www.epa.gov/state->

[and-local-transportation/vehicle-emissions-california-waivers-and-authorizations](#).

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Email: dickinson.david@epa.gov. Telephone: 202-343-9256.

SUPPLEMENTARY INFORMATION:

I. Background

CARB adopted the initial At-Berth Regulation, the Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port (2007 At-Berth Regulation), on October 16, 2008, and EPA granted California an authorization for that regulation in 2011.¹ The 2007 At-Berth Regulation applied only to fleets of container, refrigerated cargo, and cruise vessels visiting six California ports. The 2007 At-Berth Regulation required affected vessels to reduce emissions at berth by either plugging into shore power or using an equally effective compliance strategy (such as a capture and control system). Specifically, the 2007 At-Berth Regulation required fleets of container and refrigerated cargo vessels making 25 or more visits or cruise vessels making 5 or more visits to any of the six identified ports to limit the operations and emissions of auxiliary diesel engines while docked, reducing nitrogen oxide (NO_x) and diesel particulate matter (PM) emissions at berth.²

On September 27, 2022, CARB submitted a new authorization request to EPA for its amendments to the 2007 At-Berth Regulation the CARB Board adopted on August 27, 2020 (2020 At-Berth Amendments).³ The 2020 At-Berth Amendments are designed to build upon the 2007 At-Berth Regulation by extending auxiliary engine emissions reductions requirements to additional categories of ocean-going vessels (OGVs), specifically roll on-roll off (ro-ro) and tanker vessels. The 2020 At-Berth Amendments also added emission reductions requirements for tanker vessel auxiliary boilers and expanded the applicability

of the regulation to additional regulated terminals and ports within California.⁴

The 2020 At-Berth Amendments establish, among other provisions, in-use emissions-related requirements that apply beginning January 1, 2023, with limited exceptions, to any person who owns, operates, charters, or leases any United States or foreign-flag OGV that visits a California port, terminal, or berth; any person who owns, operates, or leases a port, terminal, or berth located where OGVs visit; or any person who owns, operates, or leases a CARB approved emissions control strategy (CAECS) for OGV auxiliary engines or tanker auxiliary boilers.⁵ The 2020 At-Berth Amendments establish emission controls that phase in during three separate periods. The requirements are applicable to container, reefer, and cruise vessels on January 1, 2023, all ro-ro vessels and tankers visiting the ports of Los Angeles or Long Beach on January 1, 2025, and tankers visiting all ports other than Los Angeles and Long Beach on January 2, 2027.⁶ Compliance with the 2020 At-Berth Amendments must be achieved through the use of a CARB Approved Emission Control Strategy (CAECS).⁷

⁴ A regulated California marine terminal is any terminal in California that receives 20 or more visits from container, reefer, cruise, ro-ro, or tanker vessels per calendar year the year emissions control requirements begin. Cal. Code Regs. Tit. 17, section 93.130.10(a)(2).

⁵ Compliance with the 2020 At-Berth Amendments must be achieved through the use of a CAECS that meets the minimum requirements of section 93130.5(d) of the Amendments. The strategy may include the use of shore power but may also include alternative CAECS such as barge or land-based capture and control technologies not controlled by the vessel or terminal operator. The owners of such alternative technologies are subject to CARB's regulations.

⁶ CARB states that the tanker implementation dates are staggered due to fewer infrastructure upgrade challenges expected at the ports subject to a 2025 compliance date. CARB At-Berth Authorization Request at 8.

⁷ A summary of CARB's At-Berth Regulation can be found at CARB's At-Berth Authorization Request at 6 to 18. CARB's At-Berth Authorization Request noted that the no ocean going vessel at berth or at anchor in California waters may emit visible emissions of any air pollutant for a period or periods aggregating three minutes in any hour of operation on the vessel that doesn't meet either of 2 different measurements. CARB also noted that "The opacity requirements constitute in-use controls, or characteristics or measures that limit the use of nonroad engines and accordingly do not require EPA authorization action. CARB also addressed comments during its rulemaking, similar to comments EPA received during the authorization proceeding, that the opacity requirements are emission standards and that imposing such standards at anchorage infringes on International Maritime Organization and international engine standards to which the United States is a party. CARB noted in part that the opacity requirements are part of its general opacity standards under California's Health and Safety Code section 41701. See CARB FSOR at 208-209. Because CARB did not

¹ 76 FR 77515 (Dec. 13, 2011).

² CARB defines an "auxiliary engine" as "an engine on an ocean-going vessel designed primarily to provide power for uses other than propulsion, except that all diesel-electric engines shall be considered "auxiliary engines" for purpose of this regulation." Cal. Code Regs. Tit. 17, section 93130.2(b)(9).

³ CARB At-Berth Authorization Request, EPA-HQ-OAR-2023-0152-0031.

II. Principles Governing This Review

A. Clean Air Act Nonroad Engine and Vehicle Authorizations

CAA section 209(e)(1) prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from certain new nonroad vehicles or engines.⁸ The CAA also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from all other nonroad engines or vehicles.⁹ CAA section 209(e)(2)(A), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines not preempted by CAA section 209(e)(1) if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the protectiveness determination of California is arbitrary and capricious; (2) California does not need such standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with CAA section 209.

On July 20, 1994, EPA promulgated a rule (“the 1994 rule”) that sets forth,

seek EPA approval or authorization of the opacity requirement EPA is not taking any action or position with regard to the requirement or its enforceability. EPA’s decision to not act on CARB’s opacity requirement only pertains to California’s regulation and does not relate to EPA’s regulatory authority to regulate opacity. In the event CARB submits the requirement along with its At-Berth regulation to EPA as part of a state implementation plan (SIP) revision request then it may be proper to evaluate its enforceability at that time.

⁸ CAA section 209(e)(1) prohibits states or any political subdivision from adopting or enforcing any standard or other requirement relating to the control of emissions from new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles, and which are smaller than 175 horsepower, or new locomotives or new engines used in locomotives. *See* 40 CFR 1074.10(a).

⁹ *See* CAA section 209(e)(2), 42 U.S.C. 7543(e). *See* 40 CFR 1074(b). Therefore, states and localities are categorically prohibited from regulating the control of emissions from new nonroad vehicles and engines set forth in section 209(e)(1) of the CAA, but “all other” nonroad vehicles and engines (including non-new engines and vehicles otherwise noted in 209(e)(1) and all other new and non-new nonroad engines and vehicles) are preempted unless and until preemption is waived. *See* EPA’s nonroad preemption rulemakings at 59 FR 36969 (1994) and revised in 1997 (62 FR 67733). EPA notes that Appendix A to 40 CFR part 1074, subpart A sets out EPA’s interpretation of what types of state nonroad engine use and operation provisions are not preempted by section 209.

among other things, regulations providing the criteria, as found in CAA section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.¹⁰ EPA revised these regulations in 1997.¹¹

As explained below, EPA has interpreted and implemented the first two authorization criteria at section 209(e)(2)(A)(i) and 209(e)(2)(A)(ii) in the same manner as the corresponding first two waiver criteria at section 209(b)(1)(A) and 209(b)(1)(B) (applicable to on-road motor vehicles). Because of the unique language in section 209(e)(2)(A)(iii) (the third authorization criteria), EPA has provided additional information as to the interpretation and implementation of that criterion. As stated in the preamble to the 1994 rule, EPA has historically interpreted the CAA section 209(e)(2)(A)(iii) “consistent with section 209” inquiry to require that California standards and enforcement procedures be consistent with CAA sections 209(a), 209(e)(1), and 209(b)(1)(C) (as EPA has interpreted that subsection in the context of CAA section 209(b) motor vehicle waivers).¹² In order to be consistent with CAA section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with CAA section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine

¹⁰ 59 FR 36969 (July 20, 1994).

¹¹ 63 FR 18978 (April 16, 1998). These regulations were later recodified to 40 CFR part 1074, 73 FR 59397 (October 8, 2008). Similar to the language in CAA section 209(e)(2)(A), 40 CFR 1074.105 provides the criteria for EPA’s consideration of authorization requests:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California’s determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act (42 U.S.C. 7543).

(c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

¹² 59 FR at 36982–83.

consistency with CAA section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to CAA section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California “standards and accompanying enforcement procedures are not consistent with section 202(a)” of the CAA. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with CAA section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.¹³ When considering whether to grant authorizations for accompanying enforcement procedures tied to standards (such as record keeping and labeling requirements) for which an authorization has already been granted, EPA has evaluated (1) whether the enforcement procedures are so lax that they threaten the validity of California’s determination that its standards are as protective of public health and welfare as applicable Federal standards, and (2) whether the Federal and California enforcement procedures are consistent.¹⁴

In light of the similar language of sections 209(b) and 209(e)(2)(A), EPA has reviewed California’s requests for authorization of nonroad vehicle or engine standards under section 209(e)(2)(A) using the same principles that it has historically applied in reviewing requests for waivers of preemption for new motor vehicle or new motor vehicle engine standards under section 209(b).¹⁵ These principles include, among other things, that EPA should limit its inquiry to the three specific authorization criteria identified

¹³ *Id.* *See also* 78 FR 58090, 58092 (Sept. 20, 2013).

¹⁴ *See Motor & Equipment Manufacturers Association v. Environmental Protection Agency* (MEMA II), 627 F.2d 1095, 1112 (D.C. Cir. 1979). California certification test procedures need not be identical to the Federal test procedures to be “consistent.” California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and Federal test requirements with the same test vehicle in the course of the same test. *See, e.g.*, 43 FR 32182, (July 25, 1978).

¹⁵ *See Engine Manufacturers Association v. EPA*, 88 F.3d 1075, 1087 (D.C. Cir. 1996): “. . . EPA was within the bounds of permissible construction in analogizing § 209(e) on nonroad sources to § 209(a) on motor vehicles.”

in section 209(e)(2)(A),¹⁶ and that EPA should give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended EPA's review of California's decision-making be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.¹⁷

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.¹⁸ Thus, EPA's consideration of all the evidence submitted concerning an authorization decision is circumscribed by its relevance to those questions that may be considered under section 209(e)(2)(A).

B. Deference to California

In previous waiver and authorization decisions, EPA has recognized that the intent of Congress in creating a limited review based on specifically listed criteria was to ensure that the Federal government did not second-guess state policy choices. As the Agency explained in a prior waiver decision: "It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator . . . Since a balancing of risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I

believe I am required to give very substantial deference to California's judgments on this score."¹⁹ Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a Congressional intent and appropriate EPA practice of leaving the decision on "ambiguous and controversial matters of public policy" to California's judgment.²⁰ This interpretation is supported by relevant discussion in the House Committee Report for the 1977 Amendments to the CAA. Congress had the opportunity through the 1977 Amendments to restrict the preexisting waiver provision but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.²¹

C. Burden and Standard of Proof

In *MEMA I* the Court stated that the Administrator's role in a CAA section 209 proceeding is to "consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver."²² The Court in *MEMA I* considered the standard of proof under CAA section 209 for the two findings related to granting a waiver for an "accompanying enforcement procedure" (as opposed to the standards themselves): (1) protectiveness in the aggregate and (2) consistency with section 202(a) findings. The Court instructed that "the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision."²³ The Court upheld the Administrator's position that, to deny a waiver, there must be 'clear and compelling evidence'

to show that proposed procedures undermine the protectiveness of California's standards.²⁴ The Court noted that this standard of proof also accords with the Congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.²⁵ With respect to the consistency finding, the Court did not articulate a standard of proof applicable to all proceedings but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence.

Although *MEMA I* did not explicitly consider the standard of proof under CAA section 209 concerning a waiver request for "standards," as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the Court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: "[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one."²⁶ Opponents of the waiver or authorization bear the burden of showing that the criteria for a denial of California's waiver or authorization request have been met. As found in *MEMA I*, this obligation rests firmly with opponents of the waiver or authorization in a CAA section 209 proceeding:

The language of the statute and its legislative history indicate that California's regulations, and California's determinations that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.²⁷

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver or authorization decision. As the Court in *MEMA I* stated: "here, too, if the Administrator ignores evidence demonstrating that the waiver should

¹⁶ 59 FR at 36983, note 12.

¹⁷ "Waiver of Application of Clean Air Act to California State Standards," 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. In the 1990 amendments to section 209, Congress established section 209(e) and similar language in section 209(e)(1)(i) pertaining to California's nonroad emission standards which California must determine to be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

¹⁸ See, e.g., *MEMA I*.

¹⁹ See, "California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption," 40 FR 23102, 23103 (May 28, 1975).

²⁰ *Id.* at 23103–04.

²¹ *MEMA I*, 627 F.2d 1095 1110 (D.C. Cir. 1979) ((citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)).

²² *MEMA I*, 627 F.2d at 1122.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 80 FR 76468, 76471 (December 9, 2015).

²⁷ *MEMA I*, 627 F.2d at 1121.

not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' ”²⁸ Therefore, the Administrator's burden is to act “reasonably.”²⁹

D. EPA's Administrative Process in Consideration of California's Request

On March 17, 2023, EPA issued a notice for comment regarding CARB's authorization request for the 2020 At-Berth Amendments.³⁰ The notice requested the public provide EPA with comment on issues relevant to EPA's consideration of the request along with an opportunity to request a public hearing. EPA did not receive a request for a public hearing. Consequently, EPA did not hold a public hearing. The written comment period remained open until May 1, 2023.³¹ EPA's decision in this notice only pertains to the authorization request related to the 2020 At-Berth Amendments.³²

EPA requested comment on the 2020 At-Berth Amendments, and whether they meet the criteria for a full authorization. Specifically, EPA requested public comment on: (a) whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.³³

EPA received comment from several parties that opposed EPA granting an authorization to CARB for the 2020 At-

Berth Amendments.³⁴ EPA also received comment from several parties that supported EPA granting an authorization to CARB for the 2020 At-Berth Amendments.³⁵ EPA will address these comments below.

III. Discussion

Our analysis of the 2020 At-Berth Amendments in the context of the three authorization criteria is set forth below.

A. First Authorization Criterion

CAA section 209(e)(2)(A)(i) of the CAA instructs that EPA cannot grant an authorization if the Agency finds that California was arbitrary and capricious in its determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

CARB states that as with standards for new on-road motor vehicles and engines, California evaluates the protectiveness of its nonroad standards “in the aggregate,” assessing whether the State's standards, as a whole regulatory program (a whole nonroad emissions program), are at least as protective as EPA's standards.³⁶ CARB notes that this protectiveness assessment also takes place against the backdrop of prior nonroad authorizations granted for which California determined, and EPA affirmed, that California's existing nonroad emissions program is at least as protective as EPA's.³⁷

³⁴ Pacific Merchant Shipping Association (PMSA), EPA-HQ-OAR-0152-0062; Western States Petroleum Association (WSPA), EPA-HQ-OAR-2023-0152-0022; Maersk, EPA-HQ-OAR-0152-0021; and, Pasha Hawaii Holdings (Pasha Hawaii), EPA-HQ-OAR-2023-0152-0054.

³⁵ EPA received one comment submitted jointly (Earthjustice), EPA-HQ-OAR-2023-0152-0041, that included: BREATHE Southern California, California Environmental Voters, California Nurses for Environmental Health and Justice, Center for Biological Diversity, Center for Community Action and Environmental Justice, Central Valley Air Quality Coalition, Climate Solutions, Coalition for Clean Air, Earthjustice, East Yard Communities for Environmental Justice, Environmental Defense Fund, Friends of the Earth, Little Manila Rising, Natural Resources Defense Council, Ocean Conservancy, Pacific environment, Regional Asthma Management and Prevention, San Pedro & Peninsula Homeowners Coalition, Sierra Club, Sunflower Alliance, Washington Physicians for Social Responsibility, and the West Long Beach Association. These same commenters submitted an additional comment after the close of the comment period (Earthjustice Additional Comment), EPA-HQ-OAR-2023-0152-0063. EPA also received comment from the American Lung Association (ALA), EPA-HQ-OAR-2023-0152-0001, and the West Berkeley Alliance for Clean Air and Safe Jobs, EPA-HQ-OAR-2023-0152-0046 and the Ocean Conservancy, and other individual comments found at EPA-HQ-OAR-2023-0152.

³⁶ CARB At-Berth Authorization Request at 21.

³⁷ *Id.* EPA notes that its recently granted nonroad authorization confirmed the approach of determining whether CARB's nonroad amendments

In adopting the 2020 At-Berth Amendments, CARB's Board approved Resolution 20-22, in which it expressly declared, “the Board hereby determines that the regulations adopted herein will not cause California's off-road engine emission standards, in the aggregate, to be less protective of public health and welfare as applicable federal standards.”³⁸ CARB further stated that there is no basis for EPA to find the Board's determination is arbitrary and capricious since EPA is not authorized to regulate “in-use” nonroad engines under the CAA and is thus precluded from developing any comparable requirements for this category of sources.³⁹ CARB noted that the 2020 At-Berth Amendments are projected to achieve 3.5 tons per day (tpd) of NO_x in the South Coast (and 7.1 tpd statewide) in 2037 and is one of the control measures committed to in California's 2022 State SIP Strategy to help the South Coast reach attainment with the 2037 ozone standard. In addition, CARB noted that its 2020 At-Berth Amendments are projected to achieve cumulative total reductions from 2021 to 2032 of 17,500 tons of NO_x, 370 tons of PM_{2.5}, 870 tons of ROG; and 356,000 metric tons of carbon dioxide equivalent (CO₂e).⁴⁰

No evidence was submitted to support an argument that the stringency of CARB's At-Berth Regulation is numerically less stringent than the applicable EPA standard (in this case EPA does not have the authority to regulate in-use OGVs under its regulatory authority set forth in section 213 of the CAA, therefore there are no applicable federal standards to compare with CARB's standards). Therefore, we cannot find that California's 2020 At-Berth Amendments undermine California's previous determination that its nonroad standards and accompanying enforcement procedures, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards or that CARB's protectiveness determination submitted as part of its authorization request is arbitrary and capricious.

undermine California's previous determination that its standards and accompanying enforcement procedures, in the aggregate, are at least as protective of public health and welfare as applicable federal standards. 88 FR 24411, 24414 (April 20, 2023).

³⁸ CARB, Resolution 20-22 (quoted in CARB At-Berth Authorization Request at 22).

³⁹ CARB At-Berth Authorization Request at 22, citing CAA section 213 (EPA's authority to set nonroad emission standards for new nonroad engines and vehicles) and *Engine Manufacturers Association v. EPA*, 88 F.3d 1075 (D.C. Cir 1996) (EMA).

⁴⁰ CARB At-Berth Authorization Request at 3-5.

²⁸ *Id.* at 1126.

²⁹ *Id.*

³⁰ See “California State Nonroad Engine Pollution Control Standards; Ocean-Going Vessels At-Berth and Commercial Harbor Craft; Requests for Authorization; Opportunity for Public Hearing and Comment” 88 FR 16439 (March 17, 2023).

³¹ EPA's March 17, 2023, **Federal Register** notice also included notice of an opportunity for public hearing and written comment on a separate authorization request from California regarding amendments to its Commercial Harbor Craft (CHC) regulation. EPA did receive a request for public hearing for the CHC authorization request and announced a hearing date and extended comment period associated with that request, see 88 FR 25636, April 27, 2023. EPA's actions regarding the CHC authorization request did not affect EPA's consideration of CARB's 2020 At-Berth Amendments request and EPA did not extend the written comment period for the At-Berth request.

³² EPA's March 17, 2023, notice indicated that EPA will separately and independently evaluate the 2020 At-Berth Amendments and the 2022 CHC amendments and will issue separate final decisions for each. 88 FR at 16442, note 12.

³³ *Id.*

Thus, we cannot deny CARB's request for authorization of its Amendments based on this criterion.

One commenter asserted that California's justification for its protectiveness finding must fail because "CARB purports that EPA need not look at the proposed regulation to determine 'protectiveness', rather that California must merely be at least as protective as the federal standards."⁴¹ This commenter asserted that Congress could not have meant that CARB can adopt any regulations it proposes without some review by EPA and that EPA must delve into the regulation CARB is currently submitting rather than a general statement that CARB views its program as a whole more protective than applicable federal standards. This commenter also asserted that CARB "confuses" the issue by "creating a sub-categorization" of nonroad engines of "in-use" engines and that there is no such distinction in the CAA and is contrary to the intent of the CAA.⁴²

EPA notes that its historical practice, followed here, is to examine the specific standards that CARB has submitted for authorization and to compare the stringency of such standards to the relevant federal standards. If CARB's standards are more stringent than the relevant federal standards, then the first authorization criterion is satisfied. In addition, in the event that it appears that a specific California standard may be less stringent than an applicable federal standard, then EPA will evaluate whether California's standards as a whole are "in the aggregate" as protective of public health and welfare as applicable federal standards for nonroad vehicles and engines.⁴³ In that circumstance, even if the standards in question are less stringent than the relevant federal standards, so long as California's nonroad standards, in the aggregate, are more stringent than the federal standards, the first authorization criteria is satisfied.

In this instance there are no EPA standards that apply to OGVs that are no longer new.⁴⁴ CARB's At-Berth Regulation applies to OGVs that are not in a "new" status but rather OGVs that are non-new or "in-use" as CARB applies this concept. CARB is not creating this concept of "in-use" nor is

it inconsistent with the CAA. EPA notes that this commenter also does not account for the language in section 209(e) and related case law. For example, based on the Court decision in *EMA*, EPA implemented regulations for section 209(e) of the CAA that clarify that states and localities may not regulate (are preempted from regulating) the emissions on in-use nonroad engines and vehicles but that California may seek an authorization to enforce such regulations.⁴⁵

EPA also received comment that suggested CARB's projected emission reductions associated with the control of emissions from tankers were inaccurate.⁴⁶ This commenter noted what it believed to be a discrepancy between, on the one hand, CARB's rulemaking record where emission reduction estimates were based on capture and control technologies (not shore power) in order to control boiler emissions from tankers, and on the other, more recent statements from CARB indicating a belief shore power may provide a viable alternative. The commenter noted that CARB is incorrectly representing an overstated reduction in tanker emissions that was based on capture on control technology.⁴⁷

As noted above, EPA's scope of review of CARB's authorization request is narrow and is limited to the criteria in section 209(e)(2)(A). While EPA appreciates this commenter's concern for the accuracy in the emission reduction estimates, neither this commenter nor any other has submitted information, data, or arguments as to why claimed inaccuracies would render CARB's standards, whether alone or in

the aggregate, to be less protective than applicable federal standards. Any emission reductions from California's regulation of in-use nonroad vehicles or engines, including those from tankers, would support a finding that the State's standards are as protective as the federal, and this would be true whether the State's standards are considered in the aggregate or individually.

EPA notes that this comment was not tied to any of the three authorization criteria. To the extent the commenter may also believe that potential inaccuracies indicate a lack of a need for the 2020 At-Berth Amendments under the second authorization criterion, for the reasons noted further below, California continues to experience compelling and extraordinary conditions, and thus California has demonstrated a need for its nonroad emission program (include the At-Berth Regulations) regardless of the actual or precise emission reductions from the control of emissions from tankers.

Accordingly, for the reasons noted above, EPA cannot find that CARB's protectiveness finding is arbitrary and capricious, nor can we deny CARB's request for authorization of its 2020 At-Berth Amendments based on this criterion.

B. Second Authorization Criterion

Under section 209(e)(2)(A)(ii) of the Act, EPA must grant an authorization for California nonroad vehicle and engines standards and accompanying enforcement procedures unless EPA finds that California "does not need such State standards to meet compelling and extraordinary conditions." EPA has traditionally interpreted this provision, consistent with its interpretation of similar language in section 209(b)(1)(B), as requiring consideration of whether conditions in California justify the need for a separate nonroad vehicle and engine program to meet compelling and extraordinary conditions, and not whether any given standard or set of standards is necessary to meet such conditions.⁴⁸

Congress has not disturbed this reading of section 209(b)(1)(B), and 209(e)(2)(A)(ii), as calling for EPA review of conditions in California rather than the standards being considered for waiver or authorization. With two exceptions, EPA has consistently interpreted this provision as requiring the Agency to consider whether California needs a separate motor vehicle emission program (or nonroad program) rather than the specific

⁴¹ Maersk at 4–5 (note, this commenter did not number the pages in their comment).

⁴² *Id.*

⁴³ EPA also evaluates the first authorization criterion by assessing the numerical stringency of CARB's standard compared to applicable Federal standards. Section 209(b)(2) supports this approach.

⁴⁴ CAA section 216 defines "new", in part, as "the equitable or legal title to which has never been transferred to the ultimate purchaser."

⁴⁵ The genesis of the dispute of the scope of implied preemption in section 209(e)(2) originated from EPA's final 1994 rule that limited preemption to "new" nonroad sources and did not cover "non-new" or in-use sources. See *EMA* at 1082 (citing EPA's rule at 59 FR 3699, 36971–73 (1994)). The *EMA* Court explained that EPA has sole authority over the classes of new nonroad sources defined in section 209(e)(1). In addition, EPA and California have joint authority over all other new nonroad sources. *Id.* at 1090. The Court then examined whether all states have independent authority to regulate non-new sources or whether California has sole authority over such sources (with other states permitted to opt into California regulations). The Court held that the implied preemption of section 209(e)(2) extends beyond emission standards for new nonroad sources and includes non-new sources. *Id.* at 1094. EPA's regulations that implement the holding in *EMA* are at 40 CFR 1074.10(b) and Appendix A.

⁴⁶ WSPA at 6–7. As noted below, the commenter failed to adequately allege that this comment is related to any of the three authorization criteria. Therefore this comment is not an adequate basis for denying the authorization. Nonetheless, EPA has in its discretion addressed this comment in relation to the first and second authorization criteria.

⁴⁷ *Id.*

⁴⁸ See e.g., 82 FR 6525 (January 19, 2017); 78 FR 58090 (September 20, 2013).

standards in the request at issue to meet compelling and extraordinary conditions. Congress intended to allow California to address its extraordinary environmental conditions and foster its role as a laboratory for motor vehicle emissions control. The Agency's longstanding practice therefore has been to evaluate CARB's requests with the broadest possible discretion to allow California to select the means it determines best to protect the health and welfare of its citizens in recognition of both the harsh reality of California's air pollution and the importance of California's ability to serve as a pioneer and a laboratory for the nation in setting new motor vehicle emission standards and developing control technology.⁴⁹ EPA notes that "the statute does not provide for any probing substantive review of the California standards by federal officials."⁵⁰ As a general matter, EPA has applied the traditional interpretation in the same way for all air pollutants, criteria and GHG pollutants alike.⁵¹

In a departure from its long-standing interpretation, EPA has on two separate instances limited its interpretation of this provision to California motor vehicle standards that are designed to address local or regional air pollution problems.⁵² In both instances EPA determined that the traditional interpretation was not appropriate for standards designed to address a global air pollution problem and its effects and that it was appropriate to address such standards separately from the remainder of the program (what became known as the "alternative interpretation").⁵³

⁴⁹ See, e.g., S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967) (The waiver of preemption is for California's "unique problems and pioneering efforts."); 113 Cong. Rec. 30950, 32478 ("[T]he State will act as a testing agent for various types of controls and the country as a whole will be the beneficiary of this research.") (Statement of Sen. Murphy).

⁵⁰ *Ford Motor v. EPA*, 606 F.2d 1293, 1300 (D.C. Cir. 1979).

⁵¹ 74 FR at 32763; 76 FR 34693; 79 FR 46256; 81 FR 95982; 88 FR 20688.

⁵² 73 FR 12156 (March 8, 2008); 84 FR 51310 (September 27, 2019).

⁵³ In SAFE 1, EPA withdrew a portion of the waiver it had previously granted for California's Advanced Clean Cars (ACC) program—specifically, the waiver for California's zero emission vehicle (ZEV) mandate and the GHG emission standards within California's ACC program. EPA based its action, in part, on its determination that California did not need these emission standards to meet compelling and extraordinary conditions, within the meaning of section 209(b)(1)(B) of the CAA. That determination was in turn based on EPA's adoption of a new, GHG-pollutant specific interpretation of section 209(b)(1)(B). In any event, EPA expressly stated that its new interpretation of section 209(b)(1)(B) only applied to waiver requests for GHG emission reducing standards, SAFE 1 at 51341, n. 263. Therefore, even if EPA still

However, shortly after both instances, EPA explained that the reinterpretation of the second waiver prong in this manner is flawed and the alternative interpretation is inappropriate, finding that the traditional interpretation—in which EPA reviews the need for California's motor vehicle program as a whole—is the best interpretation.⁵⁴

CARB noted that California, particularly in the South Coast and San Joaquin Valley Air Basins, "continues to experience some of the worst air quality in the nation, and the South Coast and San Joaquin Valley Air Basins, in particular, continue to be in extreme non-attainment with national ambient air quality standards for ozone and serious non-attainment with national ambient air quality standards for particulate matter."⁵⁵ CARB identified OGVs regulated by the At-Berth Regulation as significant sources of harmful air pollutants, and the need for CARB to achieve reductions of NO_x and PM to attain the national ambient air quality standards (NAAQS) for ozone and PM.⁵⁶ In addition, the CARB Board noted the public health and air quality benefits beyond those achieved by the 2007 At-Berth Regulation and the benefits that would accrue to coastal and port communities.⁵⁷ EPA received

maintained the SAFE 1 interpretation (which EPA does not agree with for the reasons explained in the SAFE 1 Reconsideration Decision (87 FR 14332 (March 14, 2022))), EPA's traditional interpretation would still apply to this nonroad authorization request given all of the standards at issue are, in whole or in part, related to the reduction of criteria pollutant emissions. CARB notes that in addition to the cumulative tons of NO_x and PM_{2.5} between 2021 and 2032, the 2020 At-Berth Amendments are also projected to reduce 356,000 metric tons of carbon dioxide equivalent (CO₂e) (CARB At-Berth Authorization Request at 4–5). Therefore, to the extent the alternative interpretation of the second authorization criteria were to apply (*i.e.*, an assessment of the need for individual standards), EPA agrees with CARB that the OGV regulation will assist California in the substantial challenges in facing national and state ambient air quality standards for ozone and particulate matter. (CARB At-Berth Authorization Request at 25–26).

⁵⁴ 74 FR 32744 (July 8, 2009); SAFE 1 Reconsideration Decision at 14333–34, 14352–55, 14358–62.

⁵⁵ CARB At-Berth Authorization Request at 23.

⁵⁶ *Id.* at 24–28.

⁵⁷ See CARB Board Resolution 20–22. ("WHEREAS, the Regulation is designed to achieve added public health and air quality benefits that result from emissions reductions of oxides of nitrogen (NO_x), particulate matter 2.5 (PM_{2.5}), reactive organic gas (ROG), GHG emissions, black carbon, diesel particulate matter (DPM) and other toxic air contaminants, beyond those realized by the 2007 At-Berth ATCM; . . . The Regulated California Waters, which include California ports and independent marine terminals, feature meteorological, wind, and atmospheric conditions peculiar to the local waters of California, and such conditions make it likely that emissions of DPM, PM_{2.5}, ROG, and NO_x occurring within these waters and ports are transported to coastal communities and adversely affect human health and welfare and

comment that noted the April 2023 American Lung Associated Report which ranks cities and counties based on ozone and particle pollution, states that sixteen of the 25 most ozone-polluted regions in the nation are located in California.⁵⁸ This commenter noted that many of the most-polluted regions in California, and indeed the nation, house major ports and are home to millions who are most susceptible to developing illnesses from breathing unhealthy levels of air pollution, including children, the elderly, and people with underlying health conditions.⁵⁹

EPA also received comment that questioned whether CARB had adequately demonstrated the need for the At-Berth Regulations based on CARB's basis, in part, that the regulations were needed to address NAAQS issues in the South Coast and San Joaquin Valley Air Basins, and that CARB does not explain how the regulations are needed in other parts of the state.⁶⁰ This commenter also suggested that California relied on past findings and the regulation of motor vehicles (as opposed to nonroad engines and vehicles) as the basis for the need for its standards. This commenter also argued that because section 209(e)(2)(B)(i) allows other states to adopt and enforce California's emission standards, EPA has a greater duty to examine the California regulations, including the need for them.

Based on a review of the authorization record, the opponents have not demonstrated that California no longer has a need for its nonroad emission program, including its At-Berth regulations. California continues to experience some of the worst air quality in the country (measured by the NAAQS status of number of areas within California) and its port and coastal communities continue to experience serious public health and welfare impacts. In addition to the Port of Long

the environment in such communities, thereby calling for special precautions to reduce these emissions; The emissions from diesel auxiliary engines used on ocean-going vessels and boilers used on tanker vessels with steam driven boilers while at berth contribute to regional air quality problems and to potential risk of cancer and non-cancer health effects for residents living in communities near California's major ports and independent marine terminals; Upon implementation, the Regulation approved herein would reduce emissions of DPM, ROG, GHG and NO_x from diesel auxiliary engines used on ocean-going vessels and PM_{2.5}, ROG, and NO_x from boilers on tanker vessels with steam driven pumps while at berth and will reduce emissions of carbon dioxide, a GHG . . .').

⁵⁸ Earth Justice at 2.

⁵⁹ *Id.*

⁶⁰ Maersk at 7.

Beach and the Port of Los Angeles covered by the 2007 At-Berth Regulation, the 2020 At-Berth Amendments include the ports of Oakland, San Francisco, San Diego, Richmond, Stockton, Rodeo Area Marine Oil Terminals, and Hueneme with their own NAAQS attainment challenges as well as local public health impacts associated with port activities.⁶¹ The record here, as presented by CARB, is plainly based on the compelling and extraordinary conditions in California generally as opposed to discrete regions and the corresponding need for CARB's nonroad emission program.⁶²

Contrary to comments received, CARB's submission and EPA's evaluation of the second authorization criterion at section 209(e)(2)(A)(ii) is not based on CARB's findings associated with the need for California's motor vehicle emission program under section 209(b)(1)(B). CARB's Board Resolution and its authorization request plainly sets forth its basis to demonstrate the need for its nonroad emission program to meet compelling and extraordinary conditions under the second authorization criterion. Further, EPA does not evaluate the record before it under section 209(e)(2)(A), including whether there is a need for "such standards" to meet compelling and extraordinary conditions in California, based on the ability or possibility of other States to adopt California standards.⁶³

⁶¹ See Ocean Conservancy, Earth-Justice, and American Lung Association. EPA also notes that the climate changes impacts in California (including those on local public health and welfare), and the connection to and purpose of CARB's OGV At-Berth regulation and reductions of CO₂e emissions.

⁶² The commenter provided no legal rationale for interpreting the statute to require that "compelling and extraordinary conditions" exist in every part, or even in a predominance of geographic areas within California. In addition, California is responsible, in part, for developing State Implementation Plan (SIP) measures to address nonattainment and maintenance and EPA sees no basis to deny an authorization for regulations designed at the state level at a number of ports and that address emission sources that create both local and regional air quality problems.

⁶³ EPA has on several occasions noted, responding to assertions that California's standards must be evaluated in the context of actions that have been or could be taken by states adopting California standards, that the plain text of section 209 as well as the legislative history of the section limit EPA's consideration of the California standards to the state of California and do not extend to other states. See e.g., 78 FR 2112, 2132 (January 9, 2013). Similarly, "[t]he law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not

CARB has repeatedly demonstrated the need for its nonroad engines and vehicles emissions program to address compelling and extraordinary conditions throughout the state of California, including in its nonattainment areas as well as in local and port communities affected by the 2020 At-Berth Amendments. The opponents of the waiver have not adequately demonstrated that that California does not need its nonroad emissions program to meet compelling and extraordinary conditions. Therefore, I determine that I cannot deny the authorization requests under section 209(e)(2)(A)(ii).

C. Third Waiver Criterion

Section 209(e)(2)(A)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with "this section." The 1994 rule sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2)(A), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.⁶⁴ EPA has historically interpreted the section 209(e)(2)(A)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).⁶⁵

1. Consistency With CAA Section 209(a)

To be consistent with CAA section 209(a), California's 2020 At-Berth Amendments must not apply to new motor vehicles or new motor vehicle engines. This is the case. California's 2020 At-Berth Amendments expressly apply only to nonroad engines and do not apply to motor vehicles or engines

legally pertinent to my decision under section 209, so long as the *California requirement is consistent with section 202(a)* and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California. The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California." (emphasis added), 78 FR at 2115.

⁶⁴ See 40 CFR part 1074.

⁶⁵ 59 FR at 36982–83.

used in motor vehicles as defined by CAA section 216(2).⁶⁶ We did not receive any comments on California's consistency with CAA section 209(a). Therefore, EPA cannot deny California's request on the basis that California's 2020 At-Berth Amendments are not consistent with CAA section 209(a).

2. Consistency With CAA Section 209(e)(1)

To be consistent with CAA section 209(e)(1), California's 2020 At-Berth Amendments must not affect new farm or construction equipment or vehicles that are below 175 horsepower, or new locomotives or new engines used in locomotives. CARB notes that its 2020 At-Berth Amendments do not affect such permanently preempted vehicles or engines. EPA did not receive any comments regarding California's consistency with section 209(e)(1). Therefore, EPA cannot deny California's request on the basis that California's 2020 At-Berth Amendments are not consistent with section 209(e)(1).

3. Consistency With CAA Section 209(b)(1)(C)

a. Historical Context

The requirement that California's standards be consistent with CAA section 209(b)(1)(C) effectively requires consistency with section 202(a). EPA has interpreted consistency with section 202(a) using a two-pronged test: (1) whether there is sufficient lead time to permit the development of technology necessary to meet the standards and other requirements, giving appropriate consideration to the cost of compliance in the time frame provided, and (2) whether the California and Federal test procedures are sufficiently compatible to permit manufacturers to meet both the state and Federal test requirements with one test vehicle or engine.⁶⁷ We often refer to the first element by the shorthand of technological feasibility (or technological infeasibility). The scope of EPA's review of whether California's action is consistent with CAA section 202(a) is narrow. The determination is limited to whether those opposed to the authorization have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the Federal test procedures.⁶⁸

⁶⁶ The regulated engines are not "self-propelled vehicles designed for transporting persons or property on a street or highway." CAA section 216(2).

⁶⁷ See 61 FR 53371, 53372 (Oct. 11, 1996).

⁶⁸ *MEMA I*, 627, F.2d at 1126.

Under section 209(b)(1)(C), EPA must grant California's waiver (and authorization) request unless the Agency finds that California standards and accompanying enforcement procedures are "not consistent" with section 202(a) of the Act. Section 202(a)(1) grants EPA authority to regulate motor vehicle emissions generally and the accompanying section 202(a)(2) specifies that those standards are to "take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Thus, no specific lead time requirement applies to standards promulgated under section 202(a)(1).

EPA has long limited its evaluation of whether California's standards are consistent with section 202(a) to determining if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period; or whether (2) California and Federal test procedures are incompatible so that a single vehicle could not be subjected to both tests. EPA has also explained that "the import of section 209(b) is not that California and Federal standards be identical, but that the Administrator not grant a waiver of Federal preemption where compliance with the California standards is not technologically feasible within available lead time." Further, EPA's review is limited to the record on feasibility of the technology. Therefore, EPA's review is narrow and does not extend to, for example, whether the regulations under review are the most effective, whether the technology incentivized by California's regulations are the best policy choice, or whether better choices should be evaluated. The Administrator has thus long explained that "questions concerning the effectiveness of the available technology are also within the category outside my permissible scope of inquiry," under section 209(b)(1)(C).

California's accompanying enforcement procedures would also be inconsistent with section 202(a) if the Federal and California test procedures conflicted, *i.e.*, if manufacturers would be unable to meet both the California and Federal test requirements with the same test vehicle.

In determining whether there is inadequate lead time to permit the development of technology, EPA considers whether adequate technology is presently available or already in existence and in use. If technology is not presently available, EPA will

consider whether California has provided adequate lead time for the development and application of necessary technology prior to the effective date of the standards for which a waiver is being sought.

Additionally, the D.C. Circuit has held that "[i]n the waiver context, section 202(a) relates in relevant part to technological feasibility and to federal certification requirements. The technological feasibility component of section 202(a) obligates California to allow sufficient lead time to permit manufacturers to develop and apply the necessary technology. The federal certification component ensures that the Federal and California test procedures do not impose inconsistent certification requirements. Neither the Court nor the agency has ever interpreted compliance with section 202(a) to require more."⁶⁹ Regarding the technology costs portion of the technology feasibility analysis, when cost is at issue EPA evaluates the cost of developing and implementing control technology in the actual time provided by the applicable California regulations. The D.C. Circuit has stated that compliance cost "relates to the timing of a particular emission control regulation."⁷⁰ The Court, in *MEMA I*, opined that section 202's cost of compliance concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying enforcement procedures. *See* S. Rep. No. 192, 89th Cong., 1st Sess. 5–8 (1965); H.R. Rep. No. 728 90th Cong., 1st Sess. 23 (1967), reprinted in U.S. Code Cong. & Admin. News 1967, p. 1938. It relates to the timing of a particular emission control regulation rather than to its social implications.⁷¹

Regarding the burden of proof under the third prong, EPA has previously stated that its inquiry is limited to evaluating whether those opposed to the waiver have met their burden of showing either: (1) that California's standards are technologically infeasible, including whether they do not provide for adequate lead time giving due consideration to costs, or (2) that California's test procedures impose requirements inconsistent with the Federal test procedure.

b. CARB's At-Berth Authorization Request Discussion of Section 209(b)(1)(C)

CARB noted at the outset of its technological feasibility and lead time discussion that the 2020 At-Berth Amendments present "no issues regarding technical feasibility based on the existing technologies in place, the work already underway to expand emissions control technologies to new vessel types, and the compliance flexibilities that are built into the Regulation."⁷²

In the context of its discussion of several compliance options or pathways, CARB noted that shore power itself continues to be technologically feasible. For example, CARB noted that grid-supplied shore power is a technically feasible control technology that is currently being widely used in California to reduce emissions from container, refrigerated cargo, and cruise vessels for compliance with the 2007 At-Berth Regulation.⁷³ In addition, with regard to newly regulated vessels (ro-ros and tankers), CARB stated that shore power is in use for ro-ro vessels in Northern Europe and there is one instance of a tanker terminal using shore power for a limited group of tanker vessels in California at the Port of Long Beach.⁷⁴ Finally, with regard to shore power, CARB noted that some degree of retrofitting of certain vessels to use the technology is needed but that technology presently exists.⁷⁵

Another technology that CARB found to be effective for compliance and technically feasible is capture and control.⁷⁶ CARB identified capture and control technologies that would not require retrofits to vessels or terminals (if using a barge-based system) as well as land-based capture and control systems that may require some modifications to the terminals, and stated the possible need for modification was factored into compliance timelines.⁷⁷

CARB noted that operators of these vessel fleets have already installed shore power infrastructure has already been installed on a large majority of contain, reefer, and cruise vessel fleets subject to the 2007 At-Berth Regulation. As such,

⁷² CARB At-Berth Authorization Request at 30.

⁷³ *Id.* citing CARB's Initial Statement of Reasons (ISOR) at p. III–10–13.

⁷⁴ *Id.* Citing the ISOR at III–14–15 and III–18–19.

⁷⁵ *Id.*

⁷⁶ *Id.* CARB noted that the first capture and control system for vessels under the At-Berth program was granted a CARB Executive Order in 2015, and, like shore power, the technology is currently in use by container vessels for compliance with the 2007 Regulation.

⁷⁷ *Id.* at 31.

⁶⁹ *Motor Equipment Manufacturers Association v. Nicols (MEMA III)* 143 F.3d 449 (D.C. Cir 1998).

⁷⁰ *MEMA I* at 1119.

⁷¹ *Id.*

CARB expressed that newly regulated ports or terminals (under the 2020 At-Berth Amendments) receiving container, reefer, or cruise vessels are not expected to be subject to control requirements beyond what is already covered under the existing regulation and that has been demonstrated to be feasible. “Because of the widespread investment in shore power for compliance with the 2007 At-Berth Regulation, the majority of container, reefer, and cruise vessel fleets calling California are expected to continue using shore power to comply with the new Regulation.” CARB also noted that the plans submitted to CARB by those regulated ports and terminals receiving regulated container, reefer, and cruise vessels further support this finding.⁷⁸

With regard to ro-ro and tanker vessels, which were not regulated under the 2007 At-Berth Regulation, CARB noted that both shore power and capture and control technologies are technically feasible for controlling emissions from these vessel types and are already in use at some locations. “Ro-ro vessels typically have similar power needs at berth as container and reefer vessels and, as such, are expected to be able to utilize shore power equipment or a capture and control system (barge- or land-based) that is similar in design and capacity to those currently used by container and reefer vessels.” Some modifications may be necessary to ensure the technology can serve the emissions reduction needs of a ro-ro vessel, but technology manufacturers have advised CARB staff that those adjustments can be readily made within the regulatory timeframes provided for ro-ro vessel compliance.⁷⁹

Tanker vessels, generally have greater power loads at berth than container, reefer, and ro-ro vessels. CARB noted that shore power and/or capture and control systems are also anticipated to be the primary methods for reducing emissions from tankers at berth. For example, CARB noted that shore power is already in use at one tanker terminal at the Port of Long Beach (Pier T) and capture and control systems are being considered by both technology manufacturers and tanker industry members as a potential solution for compliance with the At-Berth

Regulation.⁸⁰ CARB acknowledged that “Some additional modifications to the existing capture and control system may be necessary for use on tanker vessels due to their larger power loads needed at berth and safety concerns resulting from the flammable cargos often transported by tanker vessels. These modifications include, but are not limited to, putting spuds on capture and control barges that allow them to anchor a safe distance away from the vessel (providing easy break-away capabilities in the event of an emergency situation) or developing land-based units with centralized treatment systems with additional piping and cranes at the dock designed to safely carry hot exhaust away from the vessel for after-treatment.”⁸¹

In addition to CARB’s own technology assessments, CARB noted its discussions with technology manufacturers who expressed confidence in their ability to adapt existing capture and control technologies for safe use on tanker vessels. CARB also noted the first demonstration project to develop a capture and control system for tankers underway that is expected to reach completion by the end of 2023, well ahead of the first tanker vessel compliance dates (January 2025).⁸²

CARB also noted that it had reviewed planning documents of ports and terminals that host ro-ro and tanker vessels and found that those plans generally align with the assumptions made in support of the 2020 At-Berth Amendment, with “the majority of ro-ro and tanker terminal plans indicating that regulated entities intend to use shore power or capture and control technologies to comply with the At-Berth Regulation.”⁸³ CARB noted that the At-Berth Amendments were tuned to provide “a staggered implementation schedule to reduce the burden on emissions control technology providers and contractors that specialize in wharf improvements, as bringing all tanker terminals and ro-ro terminals in at the same time could stress the ability of the existing equipment manufacturers to design, build, and deploy their systems, and could result in backorders and delays.”⁸⁴ The 2020 At-Berth Amendments require previously regulated ocean-going vessels to now comply at the newly regulated ports and terminals by January 1, 2023. The 2020 At-Berth Amendments require also

require all ro-ro vessels visiting all regulated ports and terminals (including those ports and terminals covered by CARB’s original regulation as well and ports and terminals newly regulated by the new At-Berth amendments to comply by January 1, 2025; for tankers that visit the ports of Los Angeles or Long Beach by January 1, 2025, and for all other ports and terminals by January 1, 2027.

CARB concluded that “there should be no question that sufficient pathways exist for regulated ro-ro and tanker vessels to comply with the Regulation’s requirements by the required implementation dates given that the technology to comply . . . exists, given that the Regulation provides several years of lead time for equipment adaption, permitting, and adaptation; . . .”⁸⁵

In addition to CARB’s assessments and expectations highlighted above, CARB noted a number of flexibilities built into the At-Berth regulations to accommodate varying project timelines in the event of delays. Examples of such flexibilities include providing each regulated vessel fleet and terminal with a limited number of exemptions each year and an option to remediate emissions if equipment or construction delays occur.⁸⁶

Another compliance pathway available to vessel operators, terminal operators, CAECS operators, as well as port operators is a “remediation fund” that under certain circumstances allows regulated entities to reach compliance by monetary payments. The fund supports projects that reduce equivalent emissions in the same port communities impacted by the uncontrolled emissions.⁸⁷

CARB also noted an additional compliance pathway under an “Innovative Concepts Compliance Option” added at the request of the tanker industry. This allows a terminal needing extra time to design, certify, and build an emissions control system to reduce equivalent emissions at their terminal from a different unregulated emissions source.⁸⁸

Turning to the question of costs, including the economic cost of developing and implementing requisite

⁷⁸ *Id.* CARB also noted that in addition to the availability and feasibility of shore power there is existing “barge-capture and control technology” for use on container vehicles, that such CAECS type technology can be used for any container vessel visiting a regulated California terminal, and that therefore there should be no question that regulated container, reefer, and cruise vessels will be able to comply with the 2020 At-Berth Amendments by the initial compliance date of January 1, 2023.

⁷⁹ *Id.* at 32.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 32–33.

⁸³ *Id.* at 33.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* See also CARB’s FAQ at <https://ww2.arb.ca.gov/sites/default/files/2021-11/TTD21-272%20At%20Berth%20FAQs.pdf>.

⁸⁷ *Id.* at 16–17. According to CARB, this compliance pathway is available under circumstances where equipment repairs or maintenance, delays in connecting a control strategy, and certain other circumstances are identified, and a terminal plan is submitted to and approved by CARB.

⁸⁸ *Id.* at 33.

technology to meet the 2020 At-Berth Amendments, the At-Berth Authorization Request included CARB's assessment of costs and savings for regulated entities associated with every element of the Regulation.⁸⁹

CARB noted that "A key element in considering the cost of compliance is to estimate the costs passed on by ports to terminal operators, by terminal operators to the vessel fleet operators, and by vessel fleet operators to their customers and consumers."⁹⁰ CARB noted that the costs to directly regulated parties will vary considerably depending on the compliance pathway(s) selected (*i.e.*, shore power or a capture and control system) and may include one-time equipment capital and installation costs and recurring costs for maintenance, labor, air pollution control services (rental of capture and control barge-based systems), fuel, electricity, and administrative costs, depending on the emission control strategy used for compliance. CARB noted that it broke the estimated costs down for regulated entities per year as part of the Standardized Regulatory Impact Assessment (SRIA) completed during the rulemaking process.⁹¹

CARB stated that direct costs to comply will largely be borne by ports, terminal operators, and fleet owners and operators, though the industry may choose to pass on costs to consumers without incurring significant economic disruption or impact on business competitiveness. Therefore, CARB subsequently estimated these indirect costs to consumers by calculating cost ratios in metrics of increased cost per 20-foot equivalent unit (TEU) of cargo for container and reefer vessels, increased cost per cruise vessel passenger, increased cost per automobile imported into or exported from California, and increased cost per gallon of gasoline, diesel fuel, jet fuel, and other crude products produced in California.⁹² CARB stated these

calculations further support its conclusion, pointing to the historical deference EPA provides to California's policy judgments, including judgments on costs, that the 2020 At-Berth Amendments are feasible within the lead time provided and giving appropriate consideration of costs.⁹³

The remaining element of the consistency with section 202(a) requirement is whether the At-Berth regulations raises issues regarding the incompatibility of California and federal test procedures. CARB noted that in fact, it does not adopt or create any new test procedures. "The regulation incorporates by reference a number of standards and test methods, . . . , to allow operators to submit engine test data already measured pursuant to federal regulations and the international treaty, respectively. There is no requirement for engine manufacturers or fleet owners to certify engines beyond federal and state certification testing for new engines. Additionally, there are no conflicts between federal and California test procedures for verification testing for diesel emission control strategies in that there is no comparable mandatory federal program."⁹⁴

c. Comments Received

As noted in the "Other Issues" section below, EPA received comment that recommended that the Agency not act upon CARB's authorization request until a state appeals court in California ruled on an appeal from a lower Superior Court of California decision filed on March 1, 2023.⁹⁵ EPA addresses the issue of whether it is necessary or appropriate to delay its authorization decision pending a court decision in the "Other Issues" section. However, the underlying superior court decision issued on January 18, 2023, is informative as it relates to the technological feasibility of the 2020 At-Berth Amendments.⁹⁶ The Superior Court's judgment includes an analysis of the regulation's feasibility and safety and whether CARB violated its own statutory duties by failing to demonstrate substantial evidence of feasibility and safety.⁹⁷ The Court noted that CARB may properly rely on

"reasonably foreseeable technological advances" and noted the multiple compliance options to meet the emission reduction requirements and that, while other options are available, shore power and capture and control technologies will result in the necessary reductions.⁹⁸ The Court also addressed a number of arguments from WSPA (the state court petitioner) that are similar to the comments that WSPA submitted to the record of EPA's authorization review. For example, the Court rejected WSPA's argument that CARB erred in its determination that shore power is feasible for diesel-electric tankers, finding sufficient record support for concluding shore power is among the feasible strategies for reducing auxiliary engine emissions from tanker vessels. Likewise, the Court noted CARB's regulatory accommodation of power boilers that are not configured to run on electricity.⁹⁹ With regard to lead time, the Court upheld CARB's demonstration that the timing of the regulation is feasible,¹⁰⁰ noting CARB's record evidence including statements from two technology providers that capture and control technologies could be commercially available sufficiently in advance of the 2025 and 2027 compliance dates.¹⁰¹

EPA believes it appropriate to address a threshold lead time issue raised by a commenter at the outset.¹⁰² This commenter raised two separate arguments regarding lead time and pertaining to EPA's review of CARB's regulation, suggesting that two years must be provided from the date of EPA's authorization decision and the first date of regulatory implementation by CARB. First, the commenter stated that section 209(e)(2)(A) provides that EPA shall "authorize California to *adopt and enforce standards*." Second, the commenter stated that section 209(e)(2)(B)(ii) also requires that "California and such state adopt such standards at least 2 years before commencement of the period for which

⁸⁹ EPA notes that its review of the authorization record, as it relates to cost, is more limited than what CARB laid out in the authorization request and mirrors that the Court in *MEMA I* explained. In *MEMA I*, the Court addressed the cost of compliance issue at some length in reviewing a waiver decision. According to the Court: Section 202's cost of compliance concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying enforcement procedures to the regulated entities themselves (not including indirect costs on society). Such costs relate to the timing of a particular emission control regulation rather than to its social implications.

⁹⁰ *Id.* at 35.

⁹¹ *Id.*

⁹² *Id.* These costs translate into an approximate increase in the per unit cost of: Container/Reefer:

\$1.14 per Twenty-foot Equivalent Unit (TEU);
· Cruise: \$4.65 per passenger; · Ro-ro: \$7.66 per automobile; and Tanker: <\$0.01 per gallon of finished product.

⁹³ *Id.* at 35–36.

⁹⁴ *Id.*

⁹⁵ WSPA at 7.

⁹⁶ *Western States Petroleum Association v California Air Resources Board*, (WSPA v CARB), issued by the Superior Court of California County of Los Angeles on January 18, 2023, judgment filed on March 1, 2023, Case No. 20STCP03138.

⁹⁷ *Id.* at 6 of 22.

⁹⁸ *Id.* 8, 9 of 22. The Court explained that CARB has demonstrated that both shore power and capture and control technology are "available."

⁹⁹ *Id.* at 9, 10 of 22. If a tanker uses shore power in lieu of its auxiliary engine, the At-Berth regulation does not require the tanker to curb emissions from its boiler.

¹⁰⁰ *Id.* at 11. "That is, Petitioner argues the total development time required for the technology— together with the time needed for construction of the necessary supporting complex infrastructure at tanker terminals—"could range" from 10 to 15 years after adoption of the Regulation."

¹⁰¹ *Id.* EPA is not aware of any information from the commenters in EPA's record for the authorization request to refute these technology assessments and projections.

¹⁰² PMSA at 5–6.

the standards take effect.”¹⁰³ EPA notes that the preamble to its regulation that implements section 209(e), as well as its waiver and authorization practice, clarifies that the two-year lead time requirement in section 209(e)(2)(B)(ii), which on its face applies to states adopting California’s nonroad emission standards, does not apply to California.¹⁰⁴ EPA also notes that CARB is able to adopt its regulations before an EPA authorization and California enforcement may begin when EPA issues the authorization. Further, lead time is measured by the date of adoption of applicable emission standards in California, and not by any subsequent action by EPA.¹⁰⁵

EPA notes that CARB issued an “Enforcement Notice” on March 30, 2023, that pertains to how CARB plans to implement the OGV regulation including reporting and other requirements in calendar year 2023 and once EPA issues its authorization.¹⁰⁶

With regard to the implementation timeline for the 2020 At-Berth Amendments, in addition to the two-year lead time issue addressed above, EPA received comment that stated that insufficient lead time exists to develop and modify technologies, permit, and construct needed infrastructure.¹⁰⁷ CARB noted during its rulemaking that the construction of emission control

systems for vessels, especially for tankers and ro-ro vessels, may require years to complete but may vary substantially from project to project.¹⁰⁸ CARB identified recent advancements in technology, as well as statements by technology providers regarding anticipated further advancements, in support of its conclusion that technology should reasonably be available to meet to compliance obligation timelines. CARB also noted the alternative compliance strategy of the “Innovate Concept Compliance Option” and the remediation fund for construction projects as providing additional pathways to compliance if situations arise in which technological challenges are a barrier.¹⁰⁹

EPA received comments regarding the Remediation Fund that was created by the 2020 At-Berth Amendments.¹¹⁰ One commenter noted broad industry support for the Remediation Fund conceptually but observed that CARB had not yet implemented the provision.¹¹¹ Another commenter stated that the use of the Remediation Fund does not obviate the need for timelines adequate to permit the development of requisite technology. Further, this commenter noted that if the Remediation Fund were sufficient to demonstrate technological feasibility for purposes of an EPA authorization, the logical extension would be that the Clean Air Act authorizes the creation of a carbon tax as an emission standard. In response, EPA notes that CARB derives its regulatory authority to control the emissions from OGVs not from section 202 but from its own police power and state law authorities. Further, to the extent EPA’s waiver and authorization criteria include consideration of whether CARB’s standards are consistent with section 202(a), this has only led EPA to consider whether CARB’s standards are technologically feasible, within the lead time provided and considering costs.¹¹² EPA understands the concerns expressed by the commenter that technological feasibility should be assessed against technologies that will be available within the lead time provided as opposed to demonstrating compliance (and feasibility) through the use of a

remediation fund. As noted above, EPA believes that CARB had identified the necessary technologies that can be used to meet the regulatory obligations in the lead time provided. EPA concludes that, regardless of the remediation fund, CARB’s standards are technologically feasible. While the third authorization criterion is satisfied without the fund, the fund is an additional compliance flexibility which regulated entities may in their discretion use to comply with the 2020 At-Berth Amendments.¹¹³ The opponents of the authorization have not demonstrated that the fund requires regulated entities to incur excessive costs or that the fund otherwise does not provide a reasonable, additional pathway toward compliance.¹¹⁴

EPA received several comments regarding the feasibility of the 2020 At-Berth Amendments as applied to tankers and ro-ros.¹¹⁵ Commenters noted that there are no international design and safety standards for shore power, including issues pertaining to the ability of tankers to use shore power and the lack of a standard voltage for ro-ro vessels. With regard to tankers, commenters noted that there are currently no feasible alternatives to shore power and no practical pathways without shore power and that innovative concepts are not developed at this time. Commenters also noted that there no CARB approved emission control systems (CAECS) at this time.

CARB addressed the concerns raised by the commenters during its rulemaking for the 2020 At-Berth Amendments. With regard to shore power for tankers, CARB acknowledged that while there is only one example of shore power for a tanker vessel and that not every tanker and tanker berth in California would be able to use shore power in the same way, the one example (T121) does demonstrate that shore power is a feasible strategy for reducing auxiliary engine emissions from tanker vessels.¹¹⁶ In addition, and

¹⁰³ *Id.*

¹⁰⁴ The nonroad authorization criteria are plainly spelled out in section 209(e)(2)(A) where only California is noted. Section (e)(2)(B), begins with “Any State other than California . . .” and there is no indication that 209(e)(2)(B) imposes requirements on California. EPA’s regulations that implement section 209(e) spells out the criteria for granting authorizations in 40 CFR 1074.105 (which mirrors the language in section 209(e)(2)(A) of the CAA, and EPA separately spells out the requirements for other states to adopt California’s standards in 40 CFR 1074.110 (which mirrors the language in 209(e)(2)(B)). Further, the requirement in section 209(e)(2)(A)(iii) (consistent with section 209) has, consistent with the 1994 rule, been interpreted as requiring consistency with CAA sections 209(a), 209(e)(1), and 209(b)(1)(C). EPA has stated that consistency with section 209(b)(1)(C) means that EPA will interpret the criterion the same way EPA has interpreted this criterion in prior motor vehicle waiver decisions, *i.e.*, by determining whether there is inadequate lead time to permit the development of technology necessary to meet these requirements, giving appropriate consideration to the cost of compliance within that time frame. EPA is not reopening the interpretations provided in the 1994 rulemaking in this authorization decision. 59 FR 36969, 36982–36983 (July 20, 1994).

¹⁰⁵ 88 FR 24411, 24415 (April 20, 2023). *See also* 59 FR 36969, 36981–36982 (EPA addressed the issue of whether CARB may adopt a regulation before it has received an authorization and EPA determined CARB may do so), EPA is not reopening the position taken in the 1994 rulemaking in this authorization decision.

¹⁰⁶ <https://ww2.arb.ca.gov/sites/default/files/2023-03/At%20Berth%20Enforcement%20Notice%20-%20March%2030%202023.pdf>.

¹⁰⁷ WSPA at 5.

¹⁰⁸ CARB FSOR at 57–58. CARB noted that it considered several projects and found that even construction that involved substantial new infrastructure at tanker terminals would require only five to seven years to complete.

¹⁰⁹ *Id.* at 58. *See also* CARB’s ISOR at III–19–22, and WSPA v CARB explained above.

¹¹⁰ Maersk at 10; PMSA at 17–18.

¹¹¹ Maersk at 10, this commenter also noted that CARB was restricting the fund inappropriately and noted other concerns.

¹¹² *See* 88 FR 20688 (April 6, 2023).

¹¹³ EPA does not conduct a policy review of how CARB chooses to enforce its standards, but EPA does assess the costs of the standards and the compliance pathways provided to the regulated parties. *See Engine Manufacturers Association v South Coast Air Quality District*, 541 U.S. 246 (2004). This distinction of standards on the one hand and the methods of standards enforcement on the other is significant. As noted, EPA only reviews the methods or enforcement procedures in terms of the three authorization criteria. Additional questions regarding the propriety of the State’s measures is outside the scope of EPA’s authorization review under section 209(e).

¹¹⁴ EPA’s expectation is that CARB will reasonably implement the program, but EPA’s role is not generally one of oversight of CARB’s standards once EPA has finalized its adjudicatory decision and issued an authorization.

¹¹⁵ PMSA at 7–17, Maersk, WSPA.

¹¹⁶ CARB FSOR at 259.

as noted previously, the regulation provides allowances for boiler emissions and the tanker only needs to reduce auxiliary engine emissions.¹¹⁷ CARB also addressed the viability of capture and control systems for tankers during its rulemaking and within its authorization request.¹¹⁸ Both within CARB's authorization request and its rulemaking documents it was acknowledged that the 2020 At-Berth Amendments were technology forcing and may require a number of compliance pathways. CARB also noted the incentive funding available for emissions reduction technologies.¹¹⁹

With regard to safety-related issues that could be created by complying with the 2020 At-Berth Amendments, CARB noted that "Through regular conversations with the tanker industry, staff is aware of many of the claims raised by these comments regarding land-based emissions capture systems, especially concerning the lack of space, structural stability, fire/explosion safety, and electrical safety of these systems. CARB agrees that any emission control system needs to be safe, and therefore must address identified safety concerns. Staff does not believe that technical issues, such as static discharge, are unsurmountable. Tanker vessels already have strategies in place to introduce inert gas into tanks during the offloading process. Furthermore, capture systems are substantially decoupled from a tanker vessel, directing the exhaust gas from engines and boilers taken from a vessel's stack onto a barge- or land-based system for treatment."¹²⁰ CARB also responded to the concerns expressed by one commenter regarding the inability of steamships to turn off their boilers due to thermal dynamics which require marine propulsion engines to stay hot as well as the inability of some steamships which have been retrofitted to run on

liquefied natural gas (LNG) to turn off their generators as this would result the inability to control tank pressure.¹²¹ CARB has indicated that LNG ships can receive approval to operate under the 2020 At Berth Requirements as a CARB Approved Emissions Control System ("CAECS") upon submission of adequate testing data demonstrating compliance with the 2020 At-Berth Amendments. Also, additional technological improvements and developments may occur for capture and control technologies for these LNG steamships. Finally, in the event that such LNG vessels are demonstrating efforts toward capture and control technologies but are faced with development and supply issues they can be eligible for the remediation fund.

CARB also addressed the feasibility of capture and control systems. "Capture and control systems have already been used on many other OGV categories, and in other industries. Many of the hurdles identified by the tanker industry are already known and understood by developers who believe they can be addressed. Although it is true there has not yet been a capture and control system tested and approved for tanker vessels, due to the lack of any emissions control requirements until the approval of this Regulation, technology providers have informed CARB that alternate control technology, as proven on other vessel categories, can be adapted to tanker vessels."¹²² CARB also explained the rationale behind CARB's assumption that tanker vessels will utilize land-based capture and control systems in staff's analyses was largely due to a lack of collective interest expressed by the tanker industry in regards to the development of shore power for tanker vessels. According to CARB, "capture and control systems can also treat boiler emissions. This provides an advantage for controlling tanker emissions, as shore power cannot reduce boiler emissions because boilers on OGVs are, in general, not electric powered. Retrofitting to electric boilers would be impractical, requiring large auxiliary

engines, and replacement electric boilers. This is unlikely to successfully accomplish because of space and operational constraints with vessels designs that are generally not flexible enough to undergo such a redesign and would add substantial costs on top of the costs already considered. The additional time allowed for implementation of tanker vessel control requirements (2025 and 2027) will also provide the opportunity for the development, construction and deployment of safe land-based control systems to use on tanker vessels, in addition to developing and deploying safety protocols and establishing operational requirements. However, that does not preclude a tanker vessel from selecting other options for compliance, including a barge-based capture and control system, where feasible."¹²³

CARB noted that the Innovative Concept compliance option described in section 93130.17 provides flexibility by allowing vessels or terminal operators additional time to identify opportunities for implementing a compliance strategy that reduces vessel emissions while at berth. Approved Innovative Concept projects are valid for up to 5 years and can be renewed for another compliance period of up to 5 years as long as the qualifications in the Regulation are maintained (see section 93130.17(a)(7)). Innovative Concept project applicants can apply for renewal indefinitely as long as the project continues to meet the qualifications listed in the Regulation. "As such, the Innovative Concept pathway can be utilized as a terminal's main pathway to compliance or as a bridge to reduce emissions while longer term project installations are taking place."¹²⁴

Lastly, CARB noted that the localized health benefits achieved by the 2020 At-Berth Amendments cannot wait for an international body to set a shore power standard, and that this circumstance also existed in 2007 time period when shore power was first applied to other vessels with a positive resolution before such standards were set. CARB noted its expectation that vessel operators and terminals will work together to utilize shore power systems that work best for all parties while the international shore power standard is being established. If not, CARB noted the flexibilities provided within the regulation.¹²⁵

¹¹⁷ *Id.* See also CARB ISOR at III-18-19 and *WSPA v CARB* at 11-12.

¹¹⁸ CARB ISOR at III-19-22. CARB assumed land-based capture and control systems that would be more complex than the existing system in demonstration at the Port of Los Angeles. As noted previously, CARB conducted conversations with both the tanker industry and capture and control manufacturers. "A land-based capture and control system for tanker vessels would likely consist of a large, centralized exhaust gas treatment system on-shore, with ducting on the wharf connecting to a positioning boom located on the berth or nearby platform constructed to house the positioning boom. Existing capture and control systems would also need to be scaled up from the existing systems in order to handle the higher exhaust flow from tanker vessels, as tanker vessels have a higher combined power demand for both auxiliary engines and boilers at berth when compared to other all other vessel categories except cruise vessels."

¹¹⁹ CARB FSOR at 342.

¹²⁰ *Id.*

¹²¹ Pasha Hawaii.

¹²² CARB noted that "Technology providers have used capture and control technology for regulatory compliance on container vessels and have used it on bulk and ro-ro vessels. CARB believes that the technology to control emissions on tanker vessels is similar in many aspects to the systems currently in existence and can be reasonably adapted to tankers given the time provided to the tanker industry. There are no restrictions in the Regulation that would prevent tanker vessels from utilizing other forms of emissions control technologies, including shore power or barge-based capture and control systems." CARB ISOR at Chapter III-19 through 22.

¹²³ See FSOR at 548.

¹²⁴ See FSOR at 547-549; ISOR at III-16; CEQA Responses, Master Response 4 at 17-24.

¹²⁵ See CARB FSOR at 78-79, 99-100.

d. California's 2020 At-Berth Regulations Are Consistent With Section 202(a)

As explained above, EPA has historically applied a consistency test under section 202(a) that calls for the Administrator to first review whether adequate technology already exists, and if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. After a review of the record, information, and comments received in this proceeding, EPA has determined that the opponents of the authorization request for CARB's regulations have not demonstrated that these regulations are inconsistent with section 202(a). As noted above, CARB's authorization request indicated that control technology either presently exists or is in use, that the previously regulated OGV types are reasonably projected to comply at the newly regulated ports and terminal, and that several years remain until the 2027 compliance date for the new regulated terminals. For new vessel categories, the opponents of the authorization request have not carried their burden of demonstrating that there is insufficient lead time for regulated ro-ro and tanker vessels to meet their compliance dates. CARB has identified a number of existing technologies that can be used to comply with the regulations and has noted that the Regulation provides ample lead time for equipment adaptation, permitting, and installation. Therefore, because CARB has identified a number of existing technologies and a reasonable projection of the development and modification of technologies within the lead time provided, and because opponents of the authorization have not demonstrated why such projections are unreasonable, the opponents of the authorization have not met their burden of proof to demonstrate technological infeasibility. Independent of EPA's assessment of CARB's identification of technologies and reasonable technology projections, CARB has also demonstrated a number of technology-based alternative compliance pathways in order to demonstrate the feasibility of the 2020 At-Berth Amendments and opponents have not demonstrated why such pathways are unreasonable given the amount of lead time. As noted above, the findings of the California State Superior Court in *WSPA v. CARB* adds further support to EPA's assessment of feasibility.

In addition, the Regulation provides flexibilities to account for unanticipated delays. These include a limited number of exemptions for regulated vessel fleets

and terminals, and an option to remediate emissions if equipment or construction delays occur. These exemptions as well as the remediation fund are also available if there are delays with the operation of CAECS or physical or operational constraints that have been identified in port and terminal compliance plans and under certain conditions.

Flexibility also exists in the Innovative Concepts Compliance Option that allows regulated entities to reduce emissions from other sources in and around the port if it achieves equal emissions benefits as reducing emissions from vessels at berth.

The opponents of the authorization have not demonstrated why the regulatory compliance options, considered either separately or together, render the At-Berth Regulation infeasible or inconsistent with section 202(a).

Therefore, based on the record before us, EPA cannot find that the opponents of the 2020 At-Berth Amendments authorization have met their requisite burden of proof to demonstrate that such requirements are inconsistent with section 202(a). Thus, EPA cannot deny CARB's 2020 At-Berth Amendments authorization request on this basis and therefore I cannot deny the authorization request based on the third authorization criterion.

IV. Other Issues

EPA has long construed section 209 as limiting the Agency's authority to deny California's requests for waivers and authorizations to their respective three listed criteria under section 209(b) and section 209(e)(2)(A). This narrow review approach is supported by decades of waiver and authorization practice and judicial precedent. In *MEMA I*, the D.C. Circuit held that the Agency's inquiry under section 209(b) is "modest in scope."¹²⁶ The D.C. Circuit further noted that "there is no such thing as a 'general duty' on an administrative agency to make decisions based on factors other than those Congress expressly or impliedly intended the agency to consider."¹²⁷ In *MEMA II*, the D.C. Circuit again rejected an argument that EPA must consider a factor outside the 209(b) statutory criteria concluding that doing so would restrict California's ability to "exercise broad discretion."¹²⁸ EPA's duty, in the authorization context, is thus to grant California's authorization request unless one of the three listed criteria is met.

¹²⁶ *MEMA I* at 1105.

¹²⁷ *Id.* at 1116.

¹²⁸ *MEMA II* at 453.

"[S]ection 209(b) sets forth the only waiver standards with which California must comply . . . If EPA concludes that California's standards pass this test, it is obligated to approve California's waiver application."¹²⁹ EPA has therefore consistently declined to consider factors outside the three statutory criteria listed in section 209(b) and 209(e)(2)(A).

EPA received comment that the 2020 At-Berth Amendments improperly make entities other than OGV's, such as ports and terminals, responsible for any emission standards violations, even if this "third party" does not exercise control over the regulated OGVs.¹³⁰ This commenter argued that the Clean Air Act, including section 202(a) and 209, does not authorize EPA to impose penalties on third parties (EPA assumes the commenter means this to mean that the compliance path of the remediation fund is a "penalty"). Alternatively, this commenter stated that by making a facility directly liable for emissions from third-party nonroad vehicles, "CARB is inappropriately instituting an indirect source rule framework."¹³¹ As such, this commenter claimed that CARB's regulations exceed the authority granted by sections 202(a) and 209 of the Clean Air Act.

CARB addressed this issue in its own rulemaking.¹³² CARB noted PMSA's comment and its belief that while there is a role for enhanced marine terminal and port responsibility, such responsibility should be limited only to circumstances within the control of the port or marine terminal and should avoid the hallmarks of an Indirect Source Regulation. CARB also noted PMSA's comment that "An indirect source rule is a regulation which assigns a liability and responsibility to a facility to reduce indirect mobile source

¹²⁹ *Id.* at 463.

¹³⁰ PMSA at 3. CARB's regulations impose requirements both on terminal operators and ports that are designed to ensure emission reductions associated with OGVs at berth at their locations. As specified in 93130.09, operators of terminals that received 20 or more visits must ensure that the terminals are equipped with a CAECS that will enable vessels to comply with the At-Berth regulation while at berth and if the terminal operator is unable to do so it may use a terminal incident event, pay into the remediation fund, or use an approved Innovative Concept to comply (if the vessel informs the terminal that the regulation will be complied with by onboard technologies than the terminal operator has no further responsibility. Similarly, ports that receive 20 or more visits must meet 93130.13 requirements. This includes providing any equipment or infrastructure to comply that is outside the terminal operators or vessel operators' contractual ability to provide. If the terminal operator and/or vessel operator elects to use CARB-approved emissions control equipment that does not need port assistance, then the port has no additional responsibility.

¹³¹ *Id.* at 4.

¹³² CARB FSOR at 130–131.

emissions which that facility does not control, when the mobile source can be directly regulated to reduce emissions through a traditional emissions standard, engine standard, or other in-use standard. We are concerned that many of these hallmarks are present in the proposed control measure when they were successfully avoided in the current regulation.”¹³³

CARB responded to these comments and noted it developed the At-Berth regulation under CARB’s authorities for regulating air toxics, criteria pollutants, and GHG emissions. CARB noted that “The purpose of the Regulation is to achieve emissions reductions from each vessel visit. The compliance obligations under the Regulation involve minimizing emissions from each vessel visit through various potential actions specific to that vessel visit, and reporting information needed to substantiate the required actions for that visit. Unlike an indirect source rule, the Regulation does not “cap” emissions at an entire facility or otherwise seek to reduce emissions below a certain facility-wide level. While the Regulation does regulate ports and terminals, it does so only because regulating those entities has proven essential to ensuring each vessel visit is able to use an approved emission-reducing control technology.”¹³⁴

EPA first notes that it only received an authorization request from CARB pursuant to section 209(e) of the CAA. CARB sought no approval of the 2020 At-Berth Amendments under any other provision of the CAA, including as an ISR. EPA is therefore evaluating CARB’s request solely within the confines of section 209. As noted above, EPA is confined to the authorization criteria in section 209(e)(2)(A). Therefore, EPA cannot deny CARB’s request based on an argument that such standards are not subject to section 209. EPA notes that CARB has set a “standard” such as numerical emission levels or acceptable emission-control technologies for specific ocean-going vessels. The difference between such standards, that are preempted under section 209(e) as directed to reducing emissions from nonroad engines and vehicles, and how such standards are enforced is immaterial as to the threshold question as to whether such standards are subject to section 209.¹³⁵ Therefore, to the

extent that the At-Berth regulations are properly considered standards relating to the control of emissions from nonroad engines and vehicles and preempted under section 209(e) of the CAA (and EPA believes they are so preempted), CARB’s policy choice of how it chooses to enforce such standards is not subject to EPA review other than whether such enforcement procedures meet the criteria of section 209(e).¹³⁶ In addition, the scope and type of enforcement procedures that CARB implements is subject to its state law authority. As such, sections 202 and 209 of the CAA do not create or constrain California’s regulatory authority under its police power. The requirement that CARB’s standards and accompanying enforcement procedures be consistent with section 202(a) only pertains to whether such requirements are technologically feasible, within the lead time given and considering costs and whether the California test procedures are inconsistent with federal test procedures.

Second, EPA notes that to the extent the requirements are not mobile source standards or not associated compliance or enforcement mechanisms to ensure the at-berth requirements are met, then such standards or mechanisms would not be considered preempted by section 209(e)(1) of the CAA and thus would not require an authorization by EPA before CARB enforce such standards. EPA does not consider the at-berth requirements, as they apply to terminals and ports, to be an indirect source review rule or some other type of rule under the Clean Air Act other than a mobile source requirement, but to the extent they are of a non-mobile source type then EPA notes that such rules are not subject to EPA’s approval unless they are submitted as part of a SIP

premise that under section 209(e)(2) the existence of “standards” or “other requirements” is a question separate from how the standards or requirements are enforced. As we shall explain, however, NAHB’s claim of preemption does not follow from its premise. Even if Rule 9510 establishes standards or requirements, those requirements do not relate to the control of emissions from construction equipment. In so holding, we think it crucial that the District adopted Rule 9510 under the Act’s “indirect source review program” (Rule 9510 was subsequently approved by EPA as a California SIP revision (86 FR 33542 (March 21, 2018))). In this instance CARB did not adopt the OGV At-Berth regulations under a claim of indirect source authority and the emissions being addressed are those from the mobile sources directly. Therefore, EPA is evaluating CARB’s 2020 At-Berth Amendments under section 209 of the CAA.

¹³⁶ Section 209(e)(2)(A)(iii) provides, for example, that “California’s standards and accompanying enforcement procedures are not consistent with this section.”

request.¹³⁷ Further, EPA notes that section 116 of the Clean Air Act sets forth, among other exceptions, that unless otherwise preempted by section 209 nothing precludes a State from adopting or enforcing any standard or limitation respecting emissions of air pollutants.¹³⁸

As noted above, EPA received comment concerning the legality of the At-Berth tanker requirements due to a legal challenge the commenter brought in California state court and that the commenter continues to pursue.¹³⁹ This commenter recommended that EPA not act on CARB’s authorization request pending the court’s decision. EPA notes that its statutory duty under section 209 of the Clean Air Act is to confine its review to the criteria set forth for a waiver under section 209(b) or an authorization under section 209(e).¹⁴⁰ To the extent the commenter, as a petitioner in state court, is raising legal challenges to CARB’s regulations that do not pertain to the section 209 criteria then the commenter is free to do so while EPA’s administrative process is on-going and even after EPA’s reaches its final authorization decision.¹⁴¹ Regardless, EPA’s issuance of an authorization under the terms of section 209(e) merely allows California to no longer be subject to the preemption provision, and in so doing effectively removes that barrier to the State’s enforcement of its regulations upon EPA’s issuance of the authorization. EPA’s authorization does not preclude a court from otherwise finding its own violations of law or preventing CARB’s enforcement of its regulations. Therefore, EPA believes it is not necessary to wait for a state’s court action on the At-Berth Regulation or to deny or delay an authorization on this basis.

IV. Decision

After evaluating CARB’s amendments to its At-Berth regulations described above, EPA is granting CARB’s

¹³⁷ To the extent that there is any other finding regarding the applicability of section 110 of the CAA or any other provision related to ISR, and that CARB’s At-Berth Regulations are not “standards and other requirements relating to control of emissions from such vehicles or engines” (as found in the preemption provision in section 209(e)(2)(A) of the CAA) then there is no affirmative requirement that the regulation be submitted to EPA for approval.

¹³⁸ 42 U.S.C. 7416.

¹³⁹ WSPA at 7, citing *Western States Petroleum Ass’n v. California Air Resources Bd.*, filed March 16, 2023.

¹⁴⁰ See *MEMA I*, *MEMA II*.

¹⁴¹ For example, WSPA raises a number of issues under California state law (e.g. CEQA) that do not pertain to the Clean Air Act section 209(e) criteria and EPA takes no position regarding such issues.

¹³³ *Id.*

¹³⁴ CARB At-Berth Authorization Request at 3. FSOR at 93.

¹³⁵ See *Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246 (2004). See also *National Association of Home Builders v. San Joaquin Valley*, 627 F.3d 730, 736 (9th Cir. 2010) (“We agree with NAHB’s

authorization request for its 2020 At-Berth Amendments. Based on CARB's submissions, relevant adverse comment, and other comments in the record, EPA is granting an authorization under section 209(e)(2)(A) of the CAA for CARB's 2020 At-Berth Amendments. The opponents of the authorization request have not met their burden of proof to demonstrate or to adequately support an EPA finding that CARB and its 2020 At-Berth Amendments fail to meet the three authorization criteria in section 202(e)(2)(A)(i)–(iii) of the CAA.

A. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

To the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1) for several reasons.¹⁴² This final action grants an authorization for amendments to California's At-Berth Regulations that were previously authorized by EPA. As such, this final action will affect any person who owns, operates, charters, or leases any United States or foreign-flag OGV that visits a California port, terminal, or berth; any person who owns, operates, or leases a port, terminal, or berth located where OGVs visit, or any person who owns, operates, or leases a CARB approved CAECS for OGV auxiliary engines or tanker auxiliary boilers. Furthermore, the At-

Berth Regulations, and the amendments to those regulations that are the subject of today's action, the 2020 At-Berth Amendments, are part of California's nonroad emissions program that, together with its on-highway emissions program, are regulatory programs that EPA may waive under CAA section 209. As required by statute, in evaluating the authorization criteria in this action, EPA considers not only the 2020 At-Berth Amendments in isolation, but in the context of the entire California nonroad emission program. See CAA section 209(e)(2)(A) (requiring that the protectiveness finding be made for California's standards “in the aggregate”). Moreover, EPA generally applies a consistent statutory interpretation and analytical framework in evaluating and deciding various authorization and waiver requests under CAA section 209. EPA also relies on the extensive body of D.C. Circuit case law developed by that Court since 1979 as it has reviewed and decided judicial challenges to these actions. As such, judicial review of any challenge to this action in the D.C. Circuit will centralize review of national issues in that Court and advance other Congressional principles underlying this CAA provision of avoiding piecemeal litigation, furthering judicial economy, and eliminating the risk of inconsistent judgments. For these reasons, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 20, 2023.

B. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does

not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Michael S. Regan,
Administrator.

[FR Doc. 2023–23261 Filed 10–19–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0510; FRL–11458–01–OGC]

Proposed Consent Decree, Clean Water Act Claim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding “Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,” notice is hereby given of a proposed consent decree in *Arizona Mining Reform Coalition et al. v. Guzman et al.* (D. Ariz. 2023). On September 27, 2023, the Arizona Mining Reform Coalition, the Center for Biological Diversity, Earthworks, the Concerned Citizens and Retired Miners Coalition, and the Grand Canyon Chapter of the Sierra Club (collectively, “Plaintiffs”) filed a complaint against EPA in the United States District Court for the District of Arizona alleging that the Agency failed to perform a mandatory duty under the Clean Water Act (CWA) to establish Total Maximum Daily Loads (TMDLs) for copper and lead impairments for Queen Creek, Arizona. This complaint followed submission of a Notice of Intent to Sue on August 9, 2022. EPA seeks public input on a proposed consent decree prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed consent decree must be received by November 20, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0510 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending

¹⁴² In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

comments, see the “Additional Information About Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-9616; email address: mullee.alec@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

On September 27, 2023, Plaintiffs filed a complaint in Federal district court asserting that the Arizona Department of Environmental Quality (ADEQ) constructively submitted to EPA no TMDLs for copper and lead impairments in Queen Creek. Plaintiffs allege that for this reason EPA has a mandatory duty under the CWA to approve or disapprove the constructive submission and, upon disapproval, establish these TMDLs. Plaintiffs further allege that EPA has failed to meet this duty. Following submission of a Notice of Intent to Sue containing these assertions on August 9, 2022, the parties initiated settlement discussions, which produced the proposed consent decree. Under the consent decree, EPA would be obligated to establish copper and lead TMDLs for Queen Creek by July 31, 2028, unless ADEQ first establishes and submits them to EPA by January 31, 2027. If ADEQ submits the TMDLs to EPA, the proposed consent decree provides that Plaintiffs would not object to EPA taking up to an additional 60 days beyond the 30-day statutory deadline to act on the submittal. If EPA disapproves the TMDLs submitted by ADEQ, Plaintiffs would not object to EPA taking up to 12 additional months beyond the 30-day statutory deadline to establish replacement TMDLs.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed consent decree from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0510) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0510 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa->

dockets. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA does not plan to consider these late comments.

Steven M. Neugeboren,
Associate General Counsel.

[FR Doc. 2023-23239 Filed 10-19-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11454-01-OMS]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) gives notice of a public meeting of the Good Neighbor Environmental Board (GNEB). The purpose of this meeting is for the board to discuss and approve the final integrated draft of its 20th comprehensive report on water and wastewater infrastructure issues and

challenges along the U.S.-Mexico border region.

DATES: November 6, 2023, from 1 p.m.–5 p.m. (EDT). A copy of the agenda will be posted at www.epa.gov/faca/gneb.

The meeting will be held virtually and in-person at the U.S. Environmental Protection Agency (EPA) headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20460. The meeting is open to the public with limited access available on a first-come, first-served basis. Members of the public wishing to participate should contact Eugene Green at green.eugene@epa.gov by October 30th.

Requests to make oral comments or submit written public comments to the board, should also be directed to Eugene Green at least five business days prior to the meeting. Requests for accessibility and/or accommodations for individuals with disabilities should be directed to Eugene Green at the phone number or email address listed below. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Regarding the GNEB meeting, please contact Eugene Green at (202) 564-2432 or via email at green.eugene@epa.gov.

SUPPLEMENTARY INFORMATION: The GNEB is an independent federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92-463. Its mission is to advise the President and Congress of the United States on good neighbor practices along the U.S. border with Mexico. Its recommendations are focused on environmental infrastructure needs within the U.S. states contiguous to Mexico.

Eugene Green,
Program Analyst.

[FR Doc. 2023-23125 Filed 10-19-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0511; FRL-11460-01-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or “the Act”), the Environmental Protection Agency (“EPA” or “the Agency”) is providing

notice of a proposed consent decree in *California Communities Against Toxics v. Regan*, No. 1:22-cv-1457 (D.D.C.). On May 24, 2022, California Communities Against Toxics, Clean Air Council, Clean Power Lake County, Delaware Concerned Residents for Environmental Justice, Greater-Birmingham Alliance to Stop Pollution, Kentucky Resources Council, New Castle Prevention Coalition, United Congregations of Metro-East, and Sierra Club (collectively, “Plaintiffs”) filed a complaint in the United States District Court for the District of Columbia alleging that EPA failed to perform its non-discretionary duty to “review, and revise as necessary” the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Chemical Manufacturing Area Sources (“CMAS”), at least every 8 years. The proposed consent decree would establish deadlines for the EPA Administrator (“Administrator”) to sign a notice of proposed rulemaking and a final rule for this action.

DATES: Written comments on the proposed consent decree must be received by November 20, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0511, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Stacey Simone Garfinkle, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-3103; email address: garfinkle.stacey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0511) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West,

Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information About the Proposed Consent Decree

On May 24, 2022, Plaintiffs filed a complaint in the United States District Court for the District of Columbia alleging that EPA failed to perform its nondiscretionary duty under CAA section 112(d)(6) to “review, and revise as necessary” the CMAS NESHAP, 40 CFR part 63, subpart VVVVVV, at least every 8 years. EPA promulgated the CMAS NESHAP in 2009 (75 FR 77760, December 14, 2010) and most recently revised the standards in 2012 (77 FR 75740, December 21, 2012). The proposed consent decree, if finalized, would resolve Plaintiffs’ complaint and would require that EPA review, and revise as necessary, the CMAS NESHAP, pursuant to CAA section 112(d)(6), by a date certain. Specifically, under the terms of the proposed consent decree, the Administrator would be required to sign a notice of proposed rulemaking for the CMAS source category by November 13, 2024, and a final rule by September 17, 2025.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-

0511, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2023–23142 Filed 10–19–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 178915]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before December 19, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: EDUCATIONAL MEDIA FOUNDATION, KAZK(FM), FAC. ID NO. 176305, FROM: WILLCOX, AZ, TO: CATALINA, AZ, FILE NO. 0000219614; MICHAEL RADIO COMPANY, LLC, KLLM(FM), FAC. ID NO. 762455, FROM: WHEATLAND, WY, TO: HORSE CREEK, WY, FILE NO. 0000205045; COCHISE BROADCASTING LLC, KXKR(FM), FAC. ID NO. 2185, FROM: CATALINA FOOTHILLS, AZ, TO: SOUTH TUCSON, AZ, FILE NO. 0000219669; FAMILY LIFE MINISTRIES, INC, WCOI(FM), FAC. ID NO. 768403, FROM: ELLICOTTVILLE, NY, FRANKLINVILLE, NY, FILE NO. 0000219900; AND AMERICAN EDUCATION FOUNDATION, INC., WMNK(FM), FAC. ID NO. 177028, FROM: MINOOKA, IL, TO: SHERIDAN, IL, FILE NO. 0000219024. The full text of these applications is available electronically via Licensing and Management System (LMS), <https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html>.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2023–23121 Filed 10–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–xxxx; FR ID 179269]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 19, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–XXXX.
Title: Targeting and Eliminating Unlawful Text Messages.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents: 2,893 respondents; 34,716 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this of information is contained in sections 4(i), 4(j), 227, 301, 303, 307, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, 301, 303, 307, and 316.

Total Annual Burden: 34,716 hours.

Total Annual Cost: No cost.

Needs and Uses: This notice and request for comments seeks to establish a new information collection as it pertains to the *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 21–402, CG Docket No. 02–278, Report and Order and Further Notice of Proposed Rulemaking, FCC 23–21, (rel. Mar. 17, 2023) (*Text Blocking Report and Order*). Text message-based scams can include links to well-designed phishing websites that appear identical to the website of a legitimate company and can fool a victim into providing personal or financial information. Texted links can also load unwanted software onto a device, including malware that steals passwords, credentials, or other personal information. The Federal Communications Commission (Commission) is therefore, for the first time, requiring all mobile wireless providers to block certain text messages that are highly likely to be illegal, so that all subscribers have a basic level of protection. In the *Text Blocking Report and Order*, adopted on March 16, 2023 and released on March 17, 2023, the Commission is requiring mobile wireless providers to block certain text messages that are highly likely to be illegal. The Commission is requiring mobile wireless providers to block—at the network level—texts purporting to be from North American Numbering Plan (NANP) numbers on a reasonable Do-Not-Originate (DNO) list, which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked.

Text Blocking Report and Order, FCC 23–21, para. 16.

We adopt our proposal to require mobile wireless providers to block text messages at the network level (*i.e.*, without requiring consumer opt in or opt out). The rule we adopt requires that they block texts purporting to be from numbers on a reasonable DNO list. As the Commission determined with calls, we find that no reasonable consumer would wish to receive text messages that spoof a number that is not in operation or, worse, purports to be from a well-known, trusted organization that does not send text messages and thus is highly likely to be a scam. Our requirement to block texts that purport to be from numbers on a reasonable DNO list does not include text messages from short codes.

The new information collection for which OMB approval is sought comes from the affirmative obligation adopted in the *Text Blocking Report and Order* that all mobile wireless providers must block calls using a reasonable DNO list. Currently, the Commission requires gateway providers to block voice calls purporting to originate on a reasonable DNO list, under section 47 CFR 64.1200(o) of the Commission's rules, but this is the first time that the Commission has required mobile wireless providers to block texts. The Commission is also ensuring that any erroneous blocking can be quickly remedied by requiring mobile wireless providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–23252 Filed 10–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 3 p.m. on October 24, 2023.

PLACE: This Board meeting will be open to public observation only by webcast. Visit <https://www.fdic.gov/news/board-matters/video.html> for a link to the webcast. FDIC Board Members and staff will participate from FDIC Headquarters, 550 17th Street NW, Washington, DC.

Observers requiring auxiliary aids (*e.g.*, sign language interpretation) for this meeting should email DisabilityProgram@fdic.gov to make necessary arrangements.

STATUS: Open to public observation via webcast.

MATTERS TO BE CONSIDERED: The Federal Deposit Insurance Corporation's Board of Directors will meet to consider the following matters:

Discussion Agenda

Memorandum and resolution re: Final Rule on Community Reinvestment Act Regulations.

Memorandum and resolution re: Interagency Policy Statement on Principles for Climate-Related Financial Risk Management for Large Financial Institutions.

Summary Agenda

No substantive discussion of the following items is anticipated. The Board will resolve these matters with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Memorandum and Resolution re: Notice of Proposed Rulemaking to Implement Revisions to Section 19 under the Fair Hiring in Banking Act.

Report of actions taken pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION:

Direct requests for further information concerning the meeting to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

(Authority: 5 U.S.C. 552b)

Dated at Washington, DC, on October 17, 2023.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–23309 Filed 10–18–23; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal

Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than November 20, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414.

Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. *Libertyville Savings Bank Employee Stock Ownership Trust, Fairfield, Iowa*; to become a bank holding company by acquiring 27.02 percent of the voting shares of Village Investment Company, and thereby indirectly acquiring voting shares of The Libertyville Savings Bank, both of Fairfield, Iowa. In addition, Village Investment Company to engage de novo in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-23270 Filed 10-19-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is altering an existing department wide system of records, "Records About Restricted Dataset Requesters," System Number 09-90-1401, to add records maintained by HHS' Administration for Children and Families (ACF) and to make other changes, including changing the system of records name to "Records About Requesters of Restricted Datasets." This system of records covers records about individuals within and outside HHS who request restricted datasets and software products from HHS (e.g., for health-related scientific research and study purposes), when HHS maintains the requester records in a system from which they are retrieved directly by an individual requester's name or other personal identifier.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this modified system of records is effective October 20, 2023, subject to a 30-day comment period on the revised routine use described below. Please submit any comments by November 20, 2023.

ADDRESSES: The public should submit written comments, by mail or email, to Anita Alford, Senior Official for Privacy, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, or anita.alford@hhs.gov.

FOR FURTHER INFORMATION CONTACT:

General questions about the system of records should be submitted by mail or email to Beth Kramer, HHS Privacy Act Officer, at 200 Independence Ave. SW—Suite 729H, Washington, DC 20201, or beth.kramer@hhs.gov, or (202) 690-6941.

SUPPLEMENTARY INFORMATION: This departmentwide system of records covers records about individuals within and outside HHS who request restricted datasets and software products from HHS, when HHS maintains the requester records in a record system they are retrieved directly by an individual requester's name or other

personal identifier. It currently includes records maintained by four HHS Operating Divisions. It is being revised to add records maintained by a fifth Operating Division, the Administration for Children and Families (ACF), and to make other changes, as explained below:

- The system of records name has been changed to "Records About Requesters of Restricted Datasets."
- The alterations made to add ACF's records affect the System Location, System Manager(s), Authorities, Categories of Records, and Retention sections of the System of Records Notice (SORN).

- Centers for Medicare and Medicaid Services (CMS) and Substance Abuse and Mental Health Services Administration (SAMHSA) System Manager information has been updated.

- In the Categories of Records section, additional examples of records (license application, data protection plan, and Institutional Review Board (IRB) approval records) have been added.

- Routine use 6, authorizes disclosures to the U.S. Department of Justice (DOJ) or a court in litigation, has been revised to change "litigation" to "litigation or other proceedings" and to remove wording that required the disclosures to be compatible with the purpose the original disclosed information was collected, which is redundant because it repeats part of the definition of a routine use.

- The sections specifying procedures for making access, amendment, and notification requests have been revised to reference HHS' Privacy Act regulations in 45 CFR; to state that the requests must contain the requester's full name, address, date of birth, and signature; and to require identity verification in the Contesting Records Procedures section and state that the right to contest records is limited to information that is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

"Restricted" datasets and software products are those that HHS makes affirmatively available to qualified members of the public but provides subject to restrictions, because they contain identifiable data and/or anonymized data that has the potential, when combined with other data, to identify the particular individuals, such as patients or providers, whose information is represented in the data; or because they contain other types of data that require confidentiality protection (for example, proprietary business data submitted to HHS with restrictions imposed by the submitting entity). The datasets and products are

made available through an on-line or paper-based ordering and delivery system that provides them to qualified requesters electronically or by mail.

The restrictions are necessary to protect the privacy of individuals whose information is represented in the datasets or software products, or to protect proprietary business interests or other interests needing confidentiality protection. The restrictions typically limit the data requester to using the data for research, analysis, study, and aggregate statistical reporting; prohibit any attempt to identify any individual or establishment represented in the data or to reveal proprietary data or other protected data; and require specific security measures to safeguard the data from unauthorized access. HHS is required by law to impose, monitor, and enforce the restrictions (see, for example, provisions in the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), 44 U.S.C. 3501 at note). To impose and enforce the restrictions, it is necessary to collect information about the data requesters.

The modified system of records will cover records in the following five information technology (IT) systems, or any successor IT systems, about requesters of restricted datasets:

- *Administration for Children & Families, Children's Bureau (ACF/CB)* "National Data Archive on Child Abuse and Neglect (NDACAN)." NDACAN is a data repository maintained by a contractor funded by ACF's Children's Bureau, containing deidentified child abuse and neglect data from national surveys, large-scale longitudinal surveys, state administrative data, and data collected by individual investigators. NDACAN delivers distributable datasets to researchers who apply for and receive a license. No distributable datasets contain information that is directly identifying; however, some are restricted because they have the potential to identify particular individuals if combined with other data, and thus require researchers to not only obtain a license but also submit a data protection plan and obtain Institutional Review Board (IRB) approval to receive the dataset. Records about researcher-applicants who seek restricted datasets (including the license application, data protection plan, and IRB approval records) are retrieved by the researcher-applicant's name or other personal identifier, so are Privacy Act records. (NDACAN also collects identifiable customer information about researchers who seek unrestricted datasets, in order to deliver its products and services to them; however, because

minimal information is collected about them, it would be covered by system of records 09–90–1901 if it is retrieved by personal identifier; see the below "Note.")

- *Agency for Healthcare Research and Quality (AHRQ)* "Online Application Ordering for Products from the Healthcare Cost and Utilization Project (HCUP)." HCUP is an online system established in 2013; it makes restricted databases and software available for qualified applicants to purchase for scientific research and public health use. Applicants may be researchers, patients, consumers, practitioners, providers, policy makers, or educators. The HCUP databases are annual files containing anonymous information from hospital discharge records for inpatient care and certain components of outpatient care. The HCUP software tools enhance the use of the data. The online system supports AHRQ's mission of promoting improvements in health care quality.

- *Centers for Medicare & Medicaid Services (CMS)* *Data Use Agreement (DUA) tracking system.* This system tracks disclosures of data containing Protected Health Information (PHI) or Personally Identifiable Information (PII), including authorization, payment status, and shipping status of data extracts, between CMS, its contractors, and other authorized entities.

- *National Institutes of Health (NIH)* "Controlled Data Access Systems." NIH supports "NIH-designated data repositories" that archive and distribute controlled-access, de-identified human data and results from scientific studies under the NIH Genomic Data Sharing Policy. Controlled-access data in NIH-designated data repositories are made available for secondary research only after investigators have obtained approval from NIH to use the requested data for a particular project. The National Center for Biotechnology Information database of Genotypes and Phenotypes (dbGaP) serves as a central portal to submit, locate, and request access to controlled-access, human genomic (e.g., GWAS, sequencing, expression, epigenomic) data. The dbGaP's capacity and functionality are extended by repositories managed by public or private organizations through structured partnerships ("trusted partnerships") established by NIH through a contract mechanism. Information about investigators, Institutional Signing Officials, and other users of NIH-designated controlled access repositories may be located and viewed by approved staff using the dbGaP or trusted partner-managed systems. Sharing research data supports

the mission of the NIH and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health.

- *Substance Abuse and Mental Health Services Administration (SAMHSA)* "Online Application for the Data Portal (SAMHDA)." This online data portal was established in 2013 to make restricted datasets from SAMHSA more efficiently available to designated, approved researchers. The Data Portal and all applications are maintained through the Substance Abuse and Mental Health Data Archive (SAMHDA). Currently, data from the Drug Abuse Warning Network (DAWN), DAWN Medical Examiner/Coroner component, National Survey on Drug Use and Health (NSDUH), and NSDUH Adult Clinical Interview data are available through the portal. Data recipients must complete a web-based application process and receive project approval from SAMHSA's Center for Behavioral Health and Statistics and Quality (CBHSQ), and they can use the datasets for statistical purposes only. No fees are charged for the datasets. The online portal supports SAMHSA's mission to make substance use and mental disorder information and research more accessible.

Note: This system of records does *not* include:

- *Records about requesters who seek unrestricted datasets, publications, or other information products from an HHS on-line or paper-based ordering and delivery system.* Unrestricted materials are also proactively made available to the public by HHS, but they are released without restrictions (though some may be subject to terms or conditions of use and require registration for an account and payment of a fee). Because the requests or order forms collect minimal information about the requester (i.e., the requester's name, mailing address or email address, telephone number, or other contact or delivery information, and payment information if a fee is imposed), they would be adequately covered by other SORNs (for example, 09–90–1901, HHS Correspondence, Comment, Customer Service, and Contact List Records and 09–90–0024 HHS Financial Management System Records), if a SORN is required (i.e., if the records are retrieved directly by an individual requester's name or other personal identifier). Examples include records about requesters who order materials online from AHRQ's Publications Online Store & Clearinghouse or by mail from AHRQ's Publications Clearinghouse, which provide only unrestricted publications and other

information products; and records about requesters ordering unrestricted datasets from CMS's DUA tracking system processes orders for both restricted and unrestricted datasets.

- *Records about data requesters that are not retrieved directly by an individual requester's name or other personal identifier.* These records are not subject to the Privacy Act and are not required to be covered in a SORN, even when they are associated with a restricted dataset and include additional information about the requester (such as, the requester's intended research purpose, qualifications, signed Data Use Agreement, and confidentiality training certificate). An example would be requester records that are retrieved first by a dataset identifier and/or a requesting entity's name, and then by an individual researcher's or record custodian's name.

A report on the modified system of records has been sent to OMB and Congress in accordance with 5 U.S.C. 552a(r).

Rebecca Jones Gaston,

Commissioner, Administration on Children, Youth and Families.

SYSTEM NAME AND NUMBER:

Records About Requesters of Restricted Datasets, 09–90–1401.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of each agency component responsible for the system of records is:

- *ACF:* Child Welfare Program Specialist, Children's Bureau, Administration for Children and Families, 330 C Street SW, Washington, DC 20201.

- *AHRQ:* HCUP Project Officer, Center for Delivery, Organization, and Markets, 540 Gaither Road, Rockville, MD 20850.

- *CMS:* DUA tracking system, Division of Data and Information Dissemination, Data Development and Services Group, Office of Enterprise Data and Analytics, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Mailstop: B2–29–04, Office Location: B2–03–37, Baltimore, MD 21244–1870.

- *NIH:* Office of the Director, Office of Science Policy, Division of Scientific Data Sharing Policy, 6705 Rockledge Drive—Suite 750, Bethesda, MD 20817.

- *SAMHSA:* SAMHDA Project Officer, CBHSQ, 5600 Fishers Lane, Rockville, MD 20857.

SYSTEM MANAGER(S):

- *ACF:* Child Welfare Program Specialist, Children's Bureau, Administration for Children and Families, 330 C Street SW, Washington, DC 20201; Email: cara.kelly@acf.hhs.gov, or 202–205–8636.

- *AHRQ:* HCUP Project Officer, Center for Delivery, Organization, and Markets, 540 Gaither Road, Rockville, MD 20850; Telephone: 301–427–1410; HCUP@AHRQ.GOV.

- *CMS:* DUA tracking system, Office of Enterprise Data and Analytics, Data & Information Dissemination Group, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Mailstop: B2–29–04, Office Location: B2–03–37, Baltimore, MD 21244–1870; datauseagreement@cms.hhs.gov.

- *NIH:* Office of the Director, Office of Science Policy, Division of Scientific Data Sharing Policy, 6705 Rockledge Drive—Suite 750, Bethesda, MD 20817.

- *SAMHSA:* SAMHDA Project Officer, CBHSQ, 5600 Fishers Lane, Rockville, MD 20857; 877–726–4727. (“SAMHDA” refers to Substance Abuse and Mental Health Data Archive.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The following legal authorities authorize the collection and maintenance of these records:

- *ACF:* 42 U.S.C. 5101 *et seq.*; 45 CFR 1355.40 and 1356.80 through 1356.86.

- *AHRQ:* 42 U.S.C. 299 through 299a and 299c–2.

- *CMS:* 5 U.S.C 552a(e)(10); 45 CFR 164.514(e); 44 U.S.C. 3544; 42 U.S.C. 1306.

- *NIH:* 42 U.S.C. 217a, 241, 281, 282, and 284; 48 CFR subpt. 15.3; E.O. 13478.

- *SAMHDA:* 42 U.S.C. 290aa(d)(l); 44 U.S.C. 3501(8).

See also: CIPSEA, codified at 44 U.S.C. 3501 note.

PURPOSE(S) OF THE SYSTEM:

The purposes of this system of records are to provide restricted datasets and software products to qualified data requesters in a timely and efficient manner and consistent with applicable laws, and to enable HHS to enforce data requesters' compliance with use and security restrictions that apply to the data. Relevant HHS personnel use the records on a need-to-know basis for those purposes; specifically:

- *Contact and user registration information* is used to communicate with the requester, enable the requester to access requested data electronically (for example, the requester's email address would be used to register the requester to use a public access web portal or link, and to notify the

requester when data has been delivered electronically to his registered account), locate the requester (e.g., for on-site inspections or to otherwise check compliance with the data use agreement), and deliver and track data provided by mail (e.g., to document receipt for enforcement purposes and report lost shipments to security personnel).

- *Qualifications, planned use of the data, confidentiality training information, signed data use agreement, data receipt information, on-site inspection information, and information about data breaches or contract violations* is used to grant the request (consistent with data use restrictions) or deny the request, bind the requester to the applicable data use restrictions and other security requirements, conduct on-site inspections or otherwise check the requester's compliance with the data use agreement, enforce the agreement if breached, and share information about data breaches and contract violations with other HHS components administering restricted dataset requests involving the same requesters.

- *Payment information* is used to collect any applicable fee. Any payment information shared with HHS accounting and debt collection systems is also covered under the accounting and debt collection systems' SORNs and is subject to the routine uses published in those SORNs (see, e.g., HHS Financial Management System Records, SORN #09–90–0024; and Debt Management and Collection System, SORN #09–40–0012).

- *Any of the above records* could be used to evaluate accomplishment of HHS functions related to the purposes of this system of records and to evaluate performance of contractors utilized by HHS to accomplish those functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about individuals within and outside HHS who request restricted datasets and software products that HHS makes proactively available to qualified members of the public, usually for health-related scientific research and study purposes. Examples include individual researchers and records custodians, project officers, or other representatives of entities such as universities, government agencies, and research organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include:

- *Request records*, containing the requester's name and contact information (telephone number, mailing

address, email address), affiliated entity (e.g., if making the request as a records custodian or other employee), and a description of the dataset requested.

- *Order fulfillment records*, containing user registration information such as email address and IP address (if the requester is provided access to the dataset electronically through a public access web portal or link) or mailing information (if the dataset is mailed to the requester on a disk or other media), and tracking information (providing proof of delivery).

- *Data use restriction records*, containing the requester's identification, contact, and affiliated entity information, qualifications, intended use of the data (e.g., study name, contract number), confidentiality training documentation (e.g., a coded number indicating the individual completed required confidentiality training), signed and notarized data use agreement documents (e.g., license application; affidavit of nondisclosure; declaration of nondisclosure; confidential data use and nondisclosure agreement (CDUNA); data protection plan; individual designations of agent; DUA number and expiration date; Institutional Review Board (IRB) approval records), tracking information, and any on-site inspection information.

- *Payment records (if a fee is charged)*, consisting of the requester's credit card account name, number, and billing address, or bank routing number and checking account name, address, and number.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained directly from the individual data requester to whom it applies or is derived from information supplied by the individual or provided by HHS officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about an individual dataset requester may be disclosed to parties outside HHS, without that individual's consent, as provided in these routine uses:

1. Disclosures may be made to federal agencies and department contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records (including ancillary functions, such as compiling reports and evaluating program effectiveness and contractor performance) and that have a need to have access to the records in order to assist HHS in performing the activity. Any contractor

will be required to comply with the requirements of the Privacy Act.

2. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions (including ancillary functions) relating to the purposes of this system of records for the department but technically not having the status of agency employees if they need access to the records in order to perform their assigned agency functions. For example, disclosure may be made to qualified experts not within the definition of HHS employees as prescribed in HHS regulations, for opinions as a part of the controlled data access process.

3. CMS records may be disclosed to a CMS contractor (including but not limited to Medicare Administrative Contractors, fiscal intermediaries, and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

4. Records may be disclosed to another federal agency or an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency) that administers federally funded programs, or that has the authority to investigate, potential fraud, waste or abuse in federally funded programs, when disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy or otherwise combat fraud, waste or abuse in such programs.

5. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether federal, foreign, state, local, tribal, or otherwise, responsible for enforcing, investigating or prosecuting the violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to the enforcement, regulatory,

investigative, or prosecutorial responsibility of the receiving entity.

6. Information may be disclosed to the U.S. Department of Justice (DOJ) or to a court or other tribunal, in litigation or other proceedings, when:

- a. the agency or any component thereof, or
- b. any employee of the agency in his or her official capacity, or
- c. any employee of the agency in his or her individual capacity where DOJ has agreed to represent the employee, or
- d. the United States Government is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

7. Records may be disclosed to a federal, foreign, state, local, tribal, or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for further information if it so chooses. HHS will not make an initial disclosure unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another federal agency for criminal, civil, administrative, personnel, or regulatory action.

8. Information may be disclosed to a Member of Congress or Congressional staff member in response to a written inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The Congressional office does not have any greater authority to obtain records than the individual would have if requesting the records directly.

9. Records may be disclosed to the U.S. Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

10. Disclosures may be made to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (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 HHS efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. Disclosure may be made to another federal agency or federal entity, when HHS 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.

12. Disclosure of past performance information pertaining to contractors engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records may be made to a federal agency upon request and may include information about dataset requesters.

13. NIH dataset requester records may be included in records disclosed to governmental or authorized non-governmental entities with a signed data access agreement for system data that includes records about individuals requesting and receiving restricted datasets, to use in compiling reports (such as, on the composition of biomedical and/or research workforce; authors of publications attributable to federally funded research; information made available through third-party systems as permitted by applicants or awardees for agency grants or contracts; or grant payment information reported to federal databases).

14. When records about a requester of an NIH restricted dataset are related to an award or application for award under an NIH award program, the dataset requester records may be disclosed to the award applicant, principal investigator(s), institutional officials, trainees or others named in the application, or institutional service providers for purposes of application preparation, review, or award management, and to the public consistent with reporting and transparency standards and to the extent disclosure to the public would not cause an unwarranted invasion of personal privacy.

15. HHS may disclose records from this system of records to the National Archives and Records Administration (NARA), General Services

Administration (GSA), or other relevant federal agencies in connection with records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Information about a dataset requester may also be disclosed from this system of records to parties outside HHS without the individual's consent for any of the uses authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4) through (11).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic databases and hard-copy files. CMS' DUA tracking system records may also be stored on portable media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the data requester's name, registrant/user name, User ID Number, email address, or DUA number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records needed to enforce data use restrictions are retained for 20 years by AHRQ (see DAA-0510-2013-0003-0001), 5 years by CMS (see NI-440-10-04), and 3 years by NIH (see DAA-0443-2013-0004-0004) after the agreement is closed, and may be kept longer if necessary for enforcement, audit, legal, or other purposes. The equivalent ACF and SAMHSA records will be retained indefinitely until a disposition schedule is approved by the National Archives and Records Administration (NARA). Records of payments made electronically are transmitted securely to a Payment Card Industry-compliant payment gateway for processing and are not stored. Records of payments made by check, purchase order, or wire transfer are disposed of once the funds have been received. Records are disposed of using destruction methods prescribed by NIST SP 800-88.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are safeguarded in accordance with applicable laws, rules, and policies, including HHS policies, pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A-130, Managing Information as a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Safeguards conform to the HHS Information Security and Privacy Program, <https://www.hhs.gov/ocio/securityprivacy/>.

The safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras; securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours; limiting access to electronic databases to authorized users based on roles and the principle of least privilege, and two-factor authentication (user ID and password); using a secured operating system protected by encryption, firewalls, and intrusion detection systems; using an SSL connection for secure encrypted transmissions, and requiring encryption for records stored on removable media; and training personnel in Privacy Act and information security requirements.

RECORD ACCESS PROCEDURES:

An individual who wishes to access records about him or her in this system of records must submit a written access request to the relevant System Manager at the address indicated in the "System Manager(s)" section above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the requester's full name, address, date of birth, and signature. The individual must verify his or her identity by providing either a notarized request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to \$5,000.

CONTESTING RECORD PROCEDURES:

An individual seeking to correct a record about him or her in this system of records must submit a written correction request to the relevant System Manager at the address indicated in the "System Manager(s)" section above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the requester's full name, address, date of birth, and signature, reasonably identify the record, specify the information contested, and state the corrective action sought and the reasons for the correction. The request should include any supporting documentation. The individual must verify his or her identity in the same manner required for an access request. The right to contest records is limited to information that is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains a record about him or her must submit a written notification request to the relevant System Manager at the address indicated in the "System Manager(s)" section above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the requester's full name, address, date of birth, and signature. The individual must verify his or her identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

83 FR 11213 (Mar. 14, 2018).

[FR Doc. 2023-23147 Filed 10-19-23; 8:45 am]

BILLING CODE 4184-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-1272]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Third Party Disclosure and Recordkeeping Requirements for Reportable Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by November 20, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information collection is 0910-0643. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations,

Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Third Party Disclosure and Recordkeeping Requirements for Reportable Food—21 U.S.C. 350f

OMB Control Number 0910-0643—Extension

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110-85), requires the establishment of a Reportable Food Registry (the Registry) by which instances of reportable food must be submitted to FDA by responsible parties and may be submitted by public health officials. Section 417 of the FD&C Act (21 U.S.C. 350f) defines "reportable food" as an article of food (other than infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. (See section 417(a)(2) of the FD&C Act.) We believe that the most efficient and cost-effective means to implement the Registry is by utilizing our electronic Safety Reporting Portal. The information collection provisions associated with the submission of reportable food reports has been approved under OMB control number 0910-0291.

In conjunction with the reportable foods requirements, section 417 of the FD&C Act also establishes third-party disclosure and recordkeeping burdens. Specifically, we may require the responsible party to notify the immediate previous source(s) and/or immediate subsequent recipient(s) of a reportable food (sections 417(d)(6)(B)(i) to (ii) of the FD&C Act). Similarly, we may also require the responsible party that is notified (*i.e.*, the immediate previous source and/or immediate subsequent recipient) to notify their own immediate previous source(s) and/or immediate subsequent recipient(s) of a reportable food (sections 417(d)(7)(C)(i) to (ii) of the FD&C Act).

Notification to the immediate previous source(s) and immediate subsequent recipient(s) of the article of food may be accomplished by electronic communication methods such as email, fax, or text messaging or by telegrams,

mailgrams, or first-class letters.

Notification may also be accomplished by telephone call or other personal contacts, but we recommend that such notifications also be confirmed by one of the previous methods and/or documented in an appropriate manner. We may require that the notification include any or all of the following data elements: (1) the date on which the article of food was determined to be a reportable food; (2) a description of the article of food including the quantity or amount; (3) the extent and nature of the adulteration; (4) the results of any investigation of the cause of the adulteration if it may have originated with the responsible party, if known; (5) the disposition of the article of food, when known; (6) product information typically found on packaging including product codes, use-by dates, and the names of manufacturers, packers, or distributors sufficient to identify the article of food; (7) contact information for the responsible party; (8) contact information for parties directly linked in the supply chain and notified under section 417(d)(6)(B) or 417(d)(7)(C) of the FD&C Act, as applicable; (9) the information required by FDA to be included in the notification provided by the responsible party involved under section 417(d)(6)(B) or 417(d)(7)(C) of the FD&C Act or required to report under section 417(d)(7)(A) of the FD&C Act; and (10) the unique number described in section 417(d)(4) of the FD&C Act (section 417(d)(6)(B)(iii)(I), (d)(7)(C)(iii)(I), and (e) of the FD&C Act). We may also require that the notification provides information about the actions that the recipient of the notification will perform and/or any other information we may require (section 417(d)(6)(B)(iii)(II) and (III) and (d)(7)(C)(iii)(II) and (III) of the FD&C Act).

Section 417(g) of the FD&C Act requires that responsible persons maintain records related to reportable foods for a period of 2 years.

The congressionally-identified purpose of the Registry is to provide a reliable mechanism to track patterns of adulteration in food which would support efforts by FDA to target limited inspection resources to protect the public health (see FDAAA, section 1005(a)(4)). The reporting and recordkeeping requirements described previously are designed to enable FDA to quickly identify and track an article of food (other than infant formula) for which there is a reasonable probability that the use of or exposure to such article of food will cause serious adverse health consequences or death to humans or animals. We use the information

collected under these authorities to help ensure that such products are quickly and efficiently removed from the market.

As required under section 1005(f) of FDAAA and to assist industry, we have issued the guidance entitled, “Guidance for Industry: Questions and Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007,” which is available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-questions-and-answers-regarding-reportable-food-registry-established-food-and-drug>. The guidance contains questions and answers relating to the requirements

under section 417 of the FD&C Act, including: (1) how, when, and where to submit reports to FDA; (2) who is required to submit reports to FDA; (3) what is required to be submitted to FDA; and (4) what may be required when providing notifications to other persons in the supply chain of an article of food. The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 7.46 of FDA’s regulations have been approved under OMB control number 0910–0249.

Description of Respondents: Mandatory respondents to this collection of information are the owners, operators, or agents in charge of

a domestic or foreign facility engaged in manufacturing, processing, packing, or holding food for consumption in the United States (“responsible parties”) who have information on a reportable food. Voluntary respondents to this collection of information are Federal, State, and local public health officials who have information on a reportable food.

In the **Federal Register** of May 22, 2023 (88 FR 32775), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Notifying immediate previous source of the article of food under section 417(d)(6)(B)(i) of the FD&C Act (mandatory reporters only).	1,200	1	1,200	0.6 (36 minutes)	720
Notifying immediate subsequent recipient of the article of food under section 417(d)(6)(B)(ii) of the FD&C Act (mandatory reporters only).	1,200	1	1,200	0.6 (36 minutes)	720
Notifying immediate previous source of the article of food under section 417(d)(7)(C)(i) of the FD&C Act (mandatory reporters only).	1,200	1	1,200	0.6 (36 minutes)	720
Notifying immediate subsequent recipient of the article of food under section 417(d)(7)(C)(ii) of the FD&C Act (mandatory reporters only).	1,200	1	1,200	0.6 (36 minutes)	720
Total .....	.....	.....	.....	.....	2,880

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Third Party Disclosure: Although it is not mandatory under section 1005 of FDAAA that responsible persons notify the sources and recipients of instances

of reportable food, for purposes of the burden estimate we are assuming FDA would exercise its authority and require such notifications in all such instances

for mandatory reporters. This notification burden does not affect voluntary reporters of reportable food events.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of reportable food records under section 417(g) of the FD&C Act—mandatory reports.	1,200	1	1,200	0.25 (15 minutes)	300
Maintenance of reportable food records under section 417(g) of the FD&C Act—voluntary reports.	4	1	4	0.25 (15 minutes)	1
Total .....	.....	.....	.....	.....	301

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Recordkeeping: As noted previously, section 417(g) of the FD&C Act requires that responsible persons maintain records related to reportable foods reports and notifications for a period of 2 years. However, we do not expect that records will always be kept in relation to voluntary reportable food reports.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: October 16, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23117 Filed 10–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0745]

Voluntary Consensus Standards Recognition Program for Regenerative Medicine Therapies; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled “Voluntary Consensus Standards Recognition Program for Regenerative Medicine Therapies; Guidance for Industry.” The guidance document describes a standards recognition program for regenerative medicine therapies (SRP-RMT) at FDA’s Center for Biologics Evaluation and Research (CBER) designed to identify Voluntary Consensus Standards (VCS) that might be used in the preparation and evaluation of submissions for Regenerative Medicine Therapy (RMT) products regulated by CBER when such standards are appropriate. The use of recognized VCS can assist stakeholders in more efficiently meeting regulatory requirements and increasing regulatory predictability for RMT products. This program is modeled after the formal standards and conformity assessment program (S-CAP) for medical devices where the term “recognize” refers to FDA’s formal identification of a standard after the determination that the standard is appropriate to meet relevant requirements as defined by law. CBER encourages the use of appropriate standards in the development of CBER-regulated products. The guidance announced in this notice finalizes the draft guidance of the same title dated June 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on October 20, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. [insert docket number FDA-2022-D-0745] for “Voluntary Consensus Standards Recognition Program for Regenerative Medicine Therapies.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Voluntary Consensus Standards Recognition Program for Regenerative Medicine Therapies; Guidance for Industry.” The guidance describes a program at FDA’s CBER for recognition of VCS relevant to RMT products regulated in CBER. The SRP-RMT is designed to identify and recognize VCS to facilitate the development and assessment of RMT products. The voluntary use of recognized VCS can assist stakeholders in more efficiently meeting regulatory requirements and increasing regulatory predictability for RMT products. The program parallels the S-CAP for medical devices.

The guidance describes the purpose of the program, how the SRP-RMT is expected to facilitate RMT development, and describes how the Office of Therapeutic Products in CBER generally intends to evaluate VCS for recognition in the SRP-RMT. This program will not

apply to: (1) statutory and regulatory standards that are legally binding, such as certain provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and the Public Health Service Act (42 U.S.C. 6A); (2) standards developed by Standards Development Organizations that do not follow consensus mechanisms; or (3) electronic data exchange standards for submissions to CBER.

In the **Federal Register** of Thursday, June 16, 2022 (87 FR 36327), FDA announced the availability of the draft guidance of the same title dated June 2022. FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes includes minor edits to improve clarity and the addition of information regarding information collection provisions under the Paperwork Reduction Act of 1995. The guidance announced in this notice finalizes the draft guidance dated June 2022.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Voluntary Consensus Standards Recognition Program for Regenerative Medicine Therapies." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: October 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23156 Filed 10–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1137]

Development and Licensure of Vaccines To Prevent COVID–19; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a revised guidance for industry entitled "Development and Licensure of Vaccines to Prevent COVID–19." This guidance revises the guidance of the same name, which was announced in the **Federal Register** on August 3, 2020. FDA is issuing this guidance to assist the Agency and sponsors in the clinical development and licensure of vaccines for the prevention of COVID–19. Additionally, this guidance provides an overview of key considerations to satisfy regulatory requirements set forth in the investigational new drug application (IND) regulations and in the licensing regulations for chemistry, manufacturing, and controls (CMC), and nonclinical and clinical data through development and licensure, and for post-licensure safety evaluation of COVID–19 preventive vaccines. FDA is also announcing the withdrawal of an FDA guidance document related to COVID–19.

DATES: The announcement of the guidance is published in the **Federal Register** on October 20, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2020–D–1137 for "Development and Licensure of Vaccines to Prevent COVID–19." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jessica Gillum, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a revised guidance for industry entitled "Development and Licensure of Vaccines to Prevent COVID-19." The recommendations described in the guidance are expected to assist the Agency and sponsors in the clinical development and licensure of vaccines for the prevention of COVID-19.

Due to the COVID-19 public health emergency, there was an urgent need to develop safe and effective vaccines to prevent COVID-19 and work collaboratively with industry and other partners to accelerate those efforts. To help address those needs, in June 2020, FDA issued a guidance entitled "Development and Licensure of Vaccines to Prevent COVID-19" (the "June 2020 guidance") to assist sponsors in the clinical development and licensure of vaccines for the prevention of COVID-19. The June 2020 guidance, which was announced in the **Federal Register** on August 3, 2020 (85

FR 46641), explained that we expected the recommendations would continue to apply outside the context of the COVID-19 public health emergency, and that FDA would replace that guidance with any appropriate changes based on public comments and our experience with implementation. In addition, in the **Federal Register** of March 13, 2023 (88 FR 15417), FDA listed the June 2020 guidance as one of the guidances the Agency was revising to continue in effect for 180 days after the COVID-19 public health emergency declaration issued under the Public Health Service Act expired on May 11, 2023, during which time FDA planned to further revise those guidances. Consistent with what we said in the **Federal Register** of March 13, 2023, FDA is issuing this revised final guidance.

We are issuing this revised guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (see § 10.115(g)(2) and section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(h)(1)(C)). We made this determination because the revisions to the guidance acknowledge the current epidemiology of COVID-19 or reflect current recommendations provided to sponsors and immediate implementation is required to facilitate the development of vaccines to protect the public health. Specifically, we are issuing this guidance to ensure that sponsors are aware of our current recommendations to expedite the timely development of vaccines to prevent COVID-19. In addition, we note that interested parties have had the opportunity to comment on the June 2020 guidance. Although this guidance document is being implemented immediately, it remains subject to comment in accordance with FDA's GGP regulation (§ 10.115(g)(3)(D)).

The revised guidance provides an overview of key considerations to satisfy regulatory requirements set forth in the IND regulations in part 312 (21 CFR part 312) and licensing regulations in part 601 (21 CFR part 601) for CMC, and nonclinical and clinical data through development and licensure, and for post-licensure safety evaluation of COVID-19 preventive vaccines. FDA is committed to supporting all scientifically sound approaches to attenuating the clinical impact of COVID-19. There are many candidate COVID-19 vaccines currently in development, and FDA recognizes that the considerations presented do not

represent all the considerations necessary to satisfy statutory and regulatory requirements applicable to the licensure of vaccines intended to prevent COVID-19. The nature of a particular vaccine and its intended use may impact specific data needs.

We received numerous comments on the June 2020 guidance. Those comments were considered and the revisions in this guidance reflect the responses to the comments as appropriate. Changes to the guidance from the June 2020 guidance include removal of reference to the COVID-19 public health emergency and revisions to the nonclinical data section to take into consideration that enhanced respiratory disease has not occurred with clinical use of COVID-19 vaccines. The clinical trials section has been revised to reflect that at this stage of the pandemic only very young children are likely to be serologically naïve and, in recognition of the available data on vaccine effectiveness, to recommend that sponsors provide appropriate justification for statistical criteria for clinical disease efficacy studies. In addition, editorial changes were made to improve clarity. The revised guidance announced in this notice replaces the June 2020 guidance.

The revised guidance represents the current thinking of FDA on the development and licensure of vaccines to prevent COVID-19. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). The collections of information in part 312 have been approved under OMB control number 0910-0014; the collections of information in 21 CFR part 58 regarding good laboratory practice for nonclinical laboratory studies have been approved under OMB control number 0910-0119; the collections of information in 21 CFR part 50 have been approved under OMB control number 0910-0130; the collections of information in 21 CFR parts 210, 211 and 610 have been approved under OMB control number 0910-0139; the collections of information in 21 CFR part 600 have been approved under OMB control

numbers 0910–0308 and 0910–0291 (Form FDA 3500A); the collections of information in part 601 have been approved under OMB control number 0910–0338; the collections of information in FDA’s guidance entitled “Establishment and Operation of Clinical Trial Data Monitoring Committees” have been approved under OMB control number 0910–0581; and, the collections of information in FDA’s guidance entitled “Emergency Use Authorization of Medical Products and Related Authorities” have been approved under OMB control number 0910–0595.

III. Emergency Use Authorization for Vaccines To Prevent COVID–19 Guidance

In October 2020, FDA first issued a guidance entitled “Emergency Use Authorization for Vaccines to Prevent COVID–19” (Vaccine EUA guidance) to provide sponsors of requests for emergency use authorization (EUA) for COVID–19 vaccines with recommendations regarding the data and information needed to support the issuance of an EUA under section 564 of the FD&C Act (21 U.S.C. 360bbb–3) for an investigational vaccine to prevent COVID–19. Although, the guidance stated that it was intended to remain in effect only for the duration of the public health emergency related to COVID–19 declared under the Public Health Service Act, in the **Federal Register** of March 13, 2023 (88 FR 15417 at 15421), FDA listed the guidance as one of the COVID–19-related guidances the Agency was revising to continue in effect for 180 days after the COVID–19 public health emergency declared under the PHS Act expired on May 11, 2023, during which time FDA planned to further revise those guidances. However, circumstances have changed since the end of the declared public health emergency on May 11, 2023. FDA has reviewed the Vaccine EUA guidance and determined that the guidance is no longer needed, as the Agency has shifted its focus toward communicating directly with individual manufacturers. Accordingly, the EUA guidance will no longer be in effect after the publication of the guidance for immediate implementation announced in this notice, “Development and Licensure of Vaccines to Prevent COVID–19.”

IV. Electronic Access

Persons with access to the internet may obtain the document at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

stakeholders, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: October 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23162 Filed 10–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–2316]

Benefit-Risk Assessment for New Drug and Biological Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Benefit-Risk Assessment for Human Drug and Biological Products.” FDA has developed this guidance document in accordance with goals associated with the sixth authorization of the Prescription Drug User Fee Act (PDUFA VI) under Title I of the FDA Reauthorization Act of 2017 and requirements under the 21st Century Cures Act. The intent of this guidance is to provide drug sponsors and other stakeholders with better clarity on how considerations about a drug’s benefits, risks, and risk management options factor into FDA’s pre- and postmarket regulatory decisions about new drug applications (NDAs) or biologics license applications (BLAs). This guidance finalizes the draft guidance of the same title issued in September 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on October 20, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2020–D–2316 for “Benefit-Risk Assessment for New Drug and Biological Products.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on

<https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–5003, Graham.Thompson@fda.hhs.gov; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled

“Benefit-Risk Assessment for Human Drug and Biological Products.” This guidance articulates the key considerations that factor into CDER’s and CBER’s benefit-risk assessments, including how patient experience data may be used to inform benefit-risk assessment. It discusses how sponsors, through their decisions and activities throughout the drug lifecycle, can inform FDA’s benefit-risk assessment, as well as opportunities for interaction between FDA and sponsors to discuss benefit-risk considerations. It also discusses unique considerations for benefit-risk assessments that inform regulatory decision-making that occurs in the postmarket setting.

Industry stakeholders have indicated having a clearer understanding of FDA’s decision-making context and benefit-risk considerations can help inform sponsors’ decisions about their drug development programs and the evidence they generate in support of their NDA or BLA. Patients and other stakeholders may gain further insight into the key issues that inform FDA’s assessment of benefit and risk, and a clearer understanding of how these issues fit into the regulatory framework of drug development and evaluation.

This guidance finalizes the draft guidance entitled “Benefit-Risk Assessment for New Drug and Biological Products” issued on September 30, 2021 (86 FR 54211). FDA considered comments received on the draft guidance in developing the final guidance. Changes from the draft to the final guidance include clarifying language on FDA’s approach to benefit-risk assessment of new drugs and biologics, clarifying language on important considerations for FDA’s premarket benefit-risk assessment of drugs and biologics, clarifying language on activities that occur in premarket development that inform benefit-risk assessment, and other editorial changes.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Benefit-Risk Assessment for New Drug and Biological Products.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to

review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001 as follows: (1) the content and format of investigational new drugs applications, (2) expanded access uses and treatment of patients with immediately life-threatening conditions or serious diseases or conditions, (3) regulatory requirements pertaining to postmarketing study commitments, and (4) risk evaluation and mitigation strategies pertaining to benefit-risk assessments. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014 as follows: (1) the content and format of NDAs, (2) the submission of the patient population, (3) the submission of clinical trial data, and (4) benefit-risk planning, including early consultations with FDA meetings in end-of-phase 2 and pre-NDA meetings. The collections of information for good laboratory practices for nonclinical laboratory studies have been approved under OMB control number 0910–0119. The collections of information for the submission of postmarketing adverse drug experience reporting have been approved under OMB control number 0910–0230. The collections of information in 21 CFR 201.56 and 201.57 for the content and format requirements for labeling of drugs and biologics have been approved under OMB control number 0910–0572. The collections of information in the guidance for industry entitled “Expedited Programs for Serious Conditions—Drugs and Biologics” have been approved under OMB control number 0910–0765. The collections of information in the guidance for industry entitled “Providing Postmarket Periodic Safety Reports in the International Conference on Harmonisation E2C(R2) Format (Periodic Benefit-Risk Evaluation Report)” have been approved under OMB control number 0910–0230.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: October 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23161 Filed 10–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection

Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: CAREWare Customer Satisfaction and Usage Survey

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than December 19, 2023.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: CAREWare Customer Satisfaction and Usage Survey, OMB No. 0906–xxxx–New.

Abstract: HRSA developed CAREWare, a software application first released in 2000, to help meet the data collection and reporting needs of Ryan White HIV/AIDS Program (RWHAP) grant recipients. The secure software is a free, electronic health and social support services information system for RWHAP grant recipients and their subrecipients to assist in the data requirement submissions that inform the development of the Ryan White HIV/AIDS Program Service Report, the AIDS Drug Assistance Program Data Report, the Ending the HIV Epidemic Initiative Triannual Report, and the voluntary Clinical Quality Measures Performance Measures. Over time, the software has evolved into a comprehensive health information system and is now the source of more than half of all the RWHAP client-level data received from recipients and subrecipients of RWHAP grant funding. CAREWare software manages HIV clinical and support service data from more than 360,000 client records in 48 states; Washington, DC; Puerto Rico; and the U.S. Virgin Islands.

The CAREWare software application contains customizable modules for tracking demographic information, services, medications, laboratory test results, immunization history, diagnoses (updated with International Classification of Diseases, Tenth Revision codes), referrals to outside agencies, and an appointment scheduler. There is a custom report generator and a performance measures module that supports quality of care initiatives at the provider level. The software also has several ways to import data from third-party sources, including commercial labs and other electronic health records (using both Health Level Seven and simple Comma Separated Value-formatted files), HIV surveillance systems, and for RWHAP Part B AIDS Drug Assistance Programs, pharmacy benefit programs. The software and user support materials can be accessed here: <https://hab.hrsa.gov/program-grants-management/careware>. Finally,

CAREWare supports users through an experienced helpdesk with ongoing software maintenance issues and enhancements to the user interface.

HRSA is proposing a customer satisfaction survey to gather feedback from CAREWare users regarding their experiences and satisfaction with the software platform and to obtain suggestions for improvement.

Need and Proposed Use of the Information: HRSA aims to understand CAREWare users' needs and concerns by collecting information on current software features and inquiring about opportunities to improve the user experience and product features. The survey will address the software's functionality and how well it meets the data collection, reporting, and quality management needs of the CAREWare user. The feedback will enable HRSA to assess, benchmark, and improve customer satisfaction with RWHAP grant recipients.

Likely Respondents: RWHAP recipients and providers who use CAREWare to produce data files for the Ryan White HIV/AIDS Program Service Report, the AIDS Drug Assistance Program Data Report, the Ending the HIV Epidemic Initiative Triannual Report, and the voluntary Clinical Quality Measures performance measures module.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
CAREWare User Survey	1,160	1	1,160	2	2,320
Total	1,160	1	1,160	2	2,320

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-23257 Filed 10-19-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Voluntary Partner Surveys To Implement Executive Order 14058 in the Health Resources and Services Administration, OMB No. 0915-0212—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than December 19, 2023.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443-3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Voluntary Partner Surveys to Implement Executive Order 14058 in the Health Resources and Services Administration, OMB No. 0915-0212—Revision.

Abstract: The purpose of information collections under this generic umbrella ICR package is to conduct a limited number of partner surveys. If this generic ICR is approved, information on each individual partner survey conducted under this generic ICR will not be published separately in the **Federal Register**. Approval of this specific umbrella ICR would allow HRSA to continue to conduct voluntary customer surveys of its partners to assess strengths and weaknesses in program services and processes. A previous version of this ICR was done in response to Executive Order 12862, which called on the federal government to gather feedback from customers, set customer service standards, and measure performance against those standards. In December 2021, the White House issued Executive Order 14058, calling on the federal government to improve its service delivery to its customers and put people at the center of federal government activity. In accordance with this directive, HRSA is requesting approval of this generic umbrella ICR from OMB to conduct the partner surveys with a slight increase in the allotted burden hours so that HRSA can assess its performance from a larger swath of its partner population to help ensure that HRSA's customer service delivery continues to improve, in accordance with the directive in Executive Order 14058.

HRSA customer service feedback will continue to be gathered in the form of focus groups, in-class evaluation forms, mail surveys, and telephone surveys. Although HRSA cannot anticipate all the collections that will fall under this generic umbrella ICR, HRSA anticipates receiving OMB approval to include the following collections:

- Surveys of HRSA grantees to determine satisfaction with grant processes or technical assistance provided by a HRSA contractor. Surveys may also be done to determine partner satisfaction with HRSA products or services. Surveys may be conducted by mail, telephone, or online. These surveys include the Division of Practitioner Data Bank Usability Survey generic fast track ICR, which helps identify strengths and weaknesses of the National Practitioner Data Bank customer service call center agents, and

the HRSA Electronic Handbooks Customer Service Survey generic fast track ICR, which gathers public feedback about HRSA's electronic handbooks.

- Evaluation forms completed by providers who receive training from HRSA funding recipients, to measure satisfaction with the training experience. Evaluation forms may also be done after a conference or other training session with HRSA partners. Evaluation forms may be done hard-copy or online. One evaluation form generic fast track ICR that is expected to be included in this generic umbrella ICR is the National Ryan White Conference survey forms evaluating the National Ryan White Conference on HIV Care and Treatment and the Federal Cervical Cancer Collaborative Post-Roundtable Evaluation. This will help HRSA gain better understanding of participants' experiences attending the Federal Cervical Cancer Collaborative Roundtable meetings.

- Focus groups of HRSA grantees to learn more about their needs and concerns (e.g., professional development, technical assistance, and current or expected issues with program operations). Focus groups may also be conducted to learn more about how the people served by HRSA programs react to messaging related to HRSA program activities. Focus groups may be conducted online or in person. The HRSA focus group generic fast track ICR that is expected to be included in this generic umbrella ICR includes the HRSA Division of Transplantation Formative Evaluation Minority Organ Donation Outreach consisting of a group of online focus groups designed to gather feedback on several campaign concepts.

Need and Proposed Use of the Information: Results of these surveys will be used to plan and redirect resources and efforts as needed to improve services and processes. Focus groups may also be used to gain partner input into the design of mail and telephone surveys.

Likely Respondents: HRSA partners are typically state or local governments, health care facilities, health care consortia, health care providers, and researchers. HRSA partners may also include individuals served by HRSA programs and/or funding recipients. Participation in any collections under this clearance will be entirely voluntary, and the privacy of respondents will be preserved to the extent requested by participants and as permitted by law.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain,

disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to

transmit or otherwise disclose the information.

The number of respondents was revised based on information collections approved under the collection approved in 2021. HRSA anticipates that the total burden of collections under this generic package will be slightly greater than under the prior approval for two reasons. First, HRSA is incorporating the additional burden amount approved for this ICR via a 2023 non-substantive change memo. Second, HRSA is

accounting for upcoming efforts to get public input from a larger swath of HRSA's partners in compliance with Executive Order 14058. HRSA has decreased its estimate of the average burden per response for surveys to account for the increasing use of telephone and online surveys, rather than mail-in surveys, which are more time-consuming. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Evaluation forms	41,000	1	41,000	0.05	84,050,000
Surveys (telephone, online)	55,000	1	55,000	0.10	8,250
Focus groups	2,000	1	2,000	1.50	3,000
Total	98,000	.....	98,000	.....	84,061,250

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-23130 Filed 10-19-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: November 14, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G45, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Vanitha S. Raman, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G45, Rockville, MD 20852, 301-761-7949, vanitha.raman@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 17, 2023.

David Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-23232 Filed 10-19-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Applications Review.

Date: November 13, 2023.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD

20892–2542, (301) 594–8898, barnardm@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 16, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23228 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: November 14–15, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Imoh S. Okon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–347–8881, imoh.okon@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–199: ClinGen Genomic Curation Expert Panels (U24).

Date: November 20, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20892, (301) 594–0510, mollie.manier@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Fertility Status as a Marker for Overall Health.

Date: December 5, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, chana3@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–089: Specific Pathogen Free Macaque Colonies.

Date: December 5, 2023.

Time: 1:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, malaiyandilm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–061: Workforce Diversity in Basic Cancer Research.

Date: December 5, 2023.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5902, caojn@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 16, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23234 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Institutional Research Training Grant (Parent T32).

Date: November 3, 2023.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Neuroscience Center, Bethesda, MD 20892, 301–435–1260, jasenka.borzan@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 17, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23231 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel PAR23–156: Lasker Clinical Research Scholars Program, November 21, 2023, 9:00 a.m. to 5:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the

Federal Register on October 4, 2023, 88 FR 68640 FR Doc No. 2023–21888.

This meeting is being amended to change the meeting date from November 21, 2023, to November 8, 2023, and the time from 9:00 a.m.–5:00 p.m. to 9:30 a.m.–4:00 p.m. The meeting is closed to the public.

Dated: October 17, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23230 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Disease Control and Applied Immunology.

Date: November 16, 2023.

Time: 11 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marcus Ferrone, PHARMD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, marcus.ferrone@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Genetics and Genomics.

Date: November 16, 2023.

Time: 1 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Bethesda, MD 20782, 301–402–4788, sarita.sastry@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Drug Discovery and Molecular Pharmacology.

Date: November 17, 2023.

Time: 10 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Subhamoy Pal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0926, subhamoy.pal@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: November 17, 2023.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stefania Senger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, stefania.senger@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–180: Maximizing Investigators' Research Award (R35-Clinical Trial Optional).

Date: November 20, 2023.

Time: 10 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301.402.3717, jessica.smith6@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: November 20–21, 2023.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, ruvinser@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Health Services Research.

Date: November 28, 2023.

Time: 9 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Denise Thrasher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 480–6894, thrasherad@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Aspects of the Blood-Brain Barrier and Neurovascular System and Therapeutic Strategies.

Date: December 1, 2023.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, topczewskij2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Drug Development.

Date: December 4, 2023.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, kenneth.ryan@nih.hhs.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glial Biology, Neurodegeneration and Neuroregulation.

Date: December 4, 2023.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Prithi Rajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, prithi.rajan@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: October 17, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23229 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Office of the Director; Notice of Charter Renewal**

In accordance with title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the National Cancer Institute Board of Scientific Advisors, was renewed for an additional two-year period on October 8, 2023.

It is determined that the National Cancer Institute Board of Scientific Advisors, is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or harriscl@mail.nih.gov.

Dated: October 17, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23266 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel Member Conflict: Clinical Care and Health Interventions, November 20, 2023, 9:00 a.m.–8:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 29, 2023, 88 FR 67329 Doc 2023–21352.

This meeting is being amended to start on November 15, 2023, from 9:30 a.m.–2:30 p.m. The meeting is closed to the public.

Dated: October 16, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23233 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: November 14, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 903K, Bethesda, MD 20892, (301) 480–8662, ian.thorpe@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Evaluation of National Cryo-EM Centers.

Date: November 15, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, assamunu@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Sciences in Diagnostics, Devices, and Rehabilitation.

Date: November 16–17, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amber Taylor Collins, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda,

MD 20892, (301) 827–5245, amber.collins@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NS–22–034: HEAL Initiative.

Date: November 21, 2023.

Time: 12:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anne-Sophie Marie Lucie Wattiez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4642, anne-sophie.wattiez@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention and Therapy.

Date: December 5, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laura Asnaghi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockville Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, laura.asnaghi@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Hepatology, Pharmacology and Toxicology.

Date: December 6, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Frederique Yiannikouris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3313, frederique.yiannikouris@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Anti-Infective Therapeutics.

Date: December 6–7, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marcus Ferrone, PHARMD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, marcus.ferrone@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 17, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23235 Filed 10–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361 or email Carlos.Graham@samhsa.hhs.gov.

Project: Assessment of the Communities Talk To Prevent Alcohol and Other Drug Misuse (Formerly Communities Talk To Prevent Underage Drinking—OMB No. 0930–0288) Revision

The Substance Abuse and Mental Health Services Administration/Center for Substance Abuse Prevention (SAMHSA/CSAP) is requesting a revision from the Office of Management and Budget (OMB) for the information collection regarding the Assessment of the *Communities Talk to Prevent Alcohol and Other Drug Misuse* initiative, which is implemented by the Substance Use Disorder Prevention Engagement Initiatives (SUDPEI) within CSAP. *Communities Talk* activities are grassroots activities that raise awareness of the public health dangers of substance misuse and engage communities in evidence-based prevention, particularly to individuals aged 12–25 years old. In this survey, substance use disorder (SUD) questions refers to any alcohol or drugs used in the 12 months prior to the survey and the language “alcohol and other drug

misuse” will be used to ask questions about SUDs throughout the survey. Alcohol misuse includes any underage use of alcohol. Other drug misuse includes use of marijuana, cocaine (including crack), heroin, hallucinogens, inhalants, methamphetamine, and any use of prescription stimulants, tranquilizers or sedatives (e.g., benzodiazepines), and pain relievers.¹ The data collection was most recently reinstated under OMB No. 0930–0288, Assessment of the Town Hall Meetings on Underage Drinking Prevention, which expires on May 31, 2025.

Changes

Under the most recent approval, the Organizer Survey consisted of 14 items. Under this amendment, the Organizer Survey includes 12 items about *Communities Talk* activities and how communities might be carrying out evidence-based strategies to prevent alcohol and other drug misuse. The following table provides a summary of the changes that were made to the instrument.

Current question/item	Changes made
Burden statement	Updated with language provided by SAMHSA to include “alcohol and other drug misuse” verbiage: ‘This information is being collected to assist the Substance Abuse and Mental Health Services Administration (SAMHSA) for the purpose of program monitoring of the Communities Talk to Prevent Alcohol and Other Drug Misuse initiative. This voluntary information collected will be used at an aggregate level to assess the <i>Communities Talk</i> stipend recipients’ experiences with the events and alcohol and other drug misuse prevention activities deployed by their organizations or institutions. Under the Privacy Act of 1974, any personally identifying information obtained will be kept private to the extent of the law. 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 Office of Management and Budget (OMB) control number. The OMB control number for this project is 0930–0288. Public reporting burden for this collection of information is estimated to average 15 minutes per encounter, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 5600 Fishers Ln, Room 15 E57B, Rockville, MD 20857.’

¹ Substance Abuse and Mental Health Services Administration. (2022). Highlights for the 2021

National Survey on Drug Use and Health. [https://](https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf)

www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf.

Current question/item	Changes made
Informed consent	Updated to include new “alcohol and other drug misuse” verbiage provided by SAMSHA: ‘The Substance Abuse and Mental Health Services Administration (SAMHSA) invites prevention specialists working individually or as part of a coalition to fill out this survey. A coalition refers to any group of individuals or organizations working together. This survey asks about your possible experiences with Communities Talk to Prevent Alcohol and Other Drug Misuse and how your community might be carrying out evidence-based strategies addressing alcohol and other drug misuse. Evidence-based strategies have been evaluated and found to have positive effects on the people being targeted. The survey should take approximately 15 minutes. Your participation is completely voluntary. You can stop at any time. Refusal to participate will not affect your employment, funding for your work, or result in any other penalty or loss of benefit. The evaluation team will keep your survey answers in a password-protected computer folder. It will be accessed only by the evaluation team. The evaluation team will summarize everyone’s answers in a report. The evaluation team will keep your name and contact information separate from your answers. We collect your name and contact information only to monitor who has already completed the survey, as to not request more than one response per organization. The report will not identify you and the person documenting survey completions will not analyze the data. Your thoughts are very important. They will help SAMHSA improve how it supports community-based prevention efforts. If you have any questions, please contact Dr. Genevieve Martinez-Garcia or Sarah Caban, Study Administrators, at info@stopalcoholabuse.net. By continuing, you are consenting to participate in this survey on behalf of your coalition or you.’ Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage. Question was reworded for clarity: “What is the total number of Communities Talk activities hosted in your community during this calendar year? These events may have been primarily hosted by your organization or a different one.” No modification. New q5; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage; Added examples of evidence-based strategies.
q1—In your opinion, how important is underage drinking, and its consequences, to the residents of your community?.	
q2—How many Communities Talk activities have ever taken place in your community? These events may have been primarily hosted by your organization or a different one.	
q3—What was the total number of attendees at your Communities Talk event? (Estimates are okay.).	
q4—Evidence-based strategies have been evaluated and found to have positive effects on the intended audience. Certain advance preparation may or may not help professionals build their capacity to carry out any number of evidence-based strategies to prevent underage drinking in their community. Some of the preparation may be tied to Communities Talk, while some of the preparation may not be tied to Communities Talk. This question asks about any preparation for evidence-based strategies, other than hosting a Communities Talk activity. How much have you completed the following steps?.	
q5—Have you used any material(s) from the Communities Talk website (www.stopalcoholabuse.gov/communitiestalk)?.	New q6.
q5A—What material(s) from the Communities Talk website (www.stopalcoholabuse.gov/communitiestalk) have you used?.	New q6A; Modified response options: removed “Registration Tutorial Video” and added “Prevention Event Planner web app”.
q6—Please rate your agreement with the following statement: I know how to use evidence-based approaches to carry out future underage drinking prevention activities.	New q7; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage.
q7—Prevention professionals take several steps as part of their evidence-based work. How confident are you that you can carry out the following tasks?.	New q8; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage; Added the following items under this question: “Acquire/get materials for priority populations.” “Collaborate with others to implement resources or programming.” “Work with my local legislators or policymakers to create laws and/or policies.”
q8—There are many ways to prevent underage drinking in a community. Different communities need different evidence-based strategies. SAMHSA wants to learn what works best for your community. Currently, which of the following activities are you or your organization collaborating with others on to prevent underage drinking in your community?.	New q9; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage; Added the following items under this question: “Prevent sales of other drugs at public events where youth are present”.
q9—A community’s needs and its resources may change over time. In the future, how likely is it that you or your organization will plan or collaborate with others on the following activities to prevent substance use underage drinking in your community?.	New q12; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage; Added the following items under this question: “Prevent sales of other drugs at public events where youth are present”.

Current question/item	Changes made
q10—Think about all of the Communities Talk activities that might have taken place in your community. How much do you agree with the following statements?.	New q13; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage.
q11—Do you have a report or something else (e.g., tables) that includes substance (mis)use data at the community level (e.g., incidences of use; activities or actions employed to prevent and combat underage drinking)?.	New q14; Replaced “underage drinking” verbiage with “alcohol and other drug misuse” verbiage.
q11A—<IF Q11=Yes> Would you be willing to share the report with SAMHSA?.	New q14A.
q11B—<IF Q11A=Yes> Please send the report to the following address: <i>info@stopalcoholabuse.net</i> , [or] ICF, Attn.: Communities Talk—Genevieve Martinez-Garcia, 530 Gaither Rd., Suite 500, Rockville, MD 20857.	New q14B.
q12—How would you characterize the location where the Communities Talk event or activity was held?.	New q15.
q13—Which of the following best describes your organization?	New q16.
q14—Which of the following best describes the primary audience(s) served by your organization? (Mark all that apply.).	New q17; Added the following response options: “Prevention specialists and volunteers” “Healthcare providers”. Item deleted.
<ALL ENDING> SAMHSA would like to contact you in about 1 year to get an update on prevention activities taking place in your community. Are you willing to be contacted in about 1 year to complete an online follow-up survey?.	

Two new questions were added pertaining to the types of substance use topics used in alcohol and other drug misuse prevention activities (q4), types of organizations that respondents’ organization collaborates with (q10), and how many partners they engage with on activities monthly (q11).

The revisions were necessary to better align the data gathered to the short-term and long-term outcomes of the *Communities Talk* activities for organizers, specifically:

Short-Term

- Increase organization’s efforts related to a holistic approach to substance use prevention, beyond solely underage drinking.
- Increase staff’s perceived threat of alcohol and other drug misuse to residents of the community;
- Increase staff’s knowledge related to using evidence-based approaches to carry out future alcohol and other drug misuse prevention activities;
- Increase staff’s perceived efficacy of *Communities Talk* to enhance alcohol and other drug misuse prevention in the community;
- Increase staff’s skills related to using evidence-based approaches to carry out future alcohol and other drug misuse prevention activities, specifically share information about alcohol and other drug misuse with others, host meetings or discussion groups; create committees, task forces, advisory boards, or other action groups; build coalitions; develop strategic plans; and advocate for policies;
- Increase staff’s self-efficacy related to using evidence-based approaches to

carry out future alcohol and other drug misuse prevention activities; and

- Increase staff’s intention related to using evidence-based approaches to carry out future alcohol and other drug misuse prevention activities.

Long-Term

- Increase staff’s use of evidence-based approaches to carry out future alcohol and other drug misuse prevention activities.
- Reduce burden on the respondents by removing the option to be contacted for a follow-up assessment.

Organizer Survey—Follow-Up

The Organizer Survey—Follow-Up has been discontinued in alignment with SAMHSA’s focus on annual assessments of *Communities Talk* activities, instead of bi-annual assessments.

SAMHSA/CSAP will be responsible for collecting, compiling, analyzing, and reporting on information requested in these surveys.

SAMHSA supports nationwide *Communities Talk* activities every year. Collecting data on each round of *Communities Talk* and using this information to inform policy and measure impact connects with SAMHSA’s Strategic Plan FY2019–FY2023, specifically “Objective 3.2: Expand community engagement around substance use prevention, treatment, and recovery” (SAMHSA, 2018). *Communities Talk* activities are intended to work at the grassroots level to raise awareness of the public health dangers of alcohol and other drug misuse and to engage communities in evidence-based prevention. Notably,

Communities Talk activities provide a forum for communities to discuss ways they can best prevent alcohol and other drug misuse by reducing the availability of alcohol and other drugs and by creating community norms that discourage demand.

SAMHSA will use the information collected to document the implementation efforts of this nationwide initiative, determine if the federally sponsored *Communities Talk* activities lead to additional activities within the community that are aimed at preventing and reducing alcohol and other drug misuse, identify what these activities may possibly include, and help plan for future rounds of *Communities Talk*. SAMHSA intends to post online a summary document of each round of *Communities Talk* activities and present findings at national conferences attended by CBOs and IHEs that have hosted these activities and might do so again in the future. Similarly, SAMHSA plans to share findings with the Interagency Coordinating Committee on the Prevention of Underage Drinking. Agencies within this committee encourage their grantees to participate in *Communities Talk*. Additionally, the information collected will support performance measurement for SAMHSA programs under the Government Performance Results Act (GPRA).

Data Collection Component

SAMHSA/CSAP will use a web-based method, such as Voxco, to collect data through the Organizer Survey. The web-based application will comply with the requirements of Section 508 of the

Rehabilitation Act to permit accessibility to people with disabilities.

On an annual basis, the Organizer Survey—Initial will be completed by an estimated 500 *Communities Talk*

activity organizers and will require only one response per respondent. It will take an average of 15 minutes (0.25 hours) to review the instructions and complete the survey. This burden

estimate is based on comments from three 2019 *Communities Talk* activity organizers who reviewed the survey and provided comments on how long it would take them to complete it.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Organizer Survey—Initial	500	1	500	0.25	125
Total	500	.....	500	.....	125

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.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2023–23240 Filed 10–19–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4741–DR; Docket ID FEMA–2023–0001]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4741–DR), dated September 21, 2023, and related determinations.

DATES: The declaration was issued September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of July 29 to August 14, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Adair, Barry, Barton, Bates, Benton, Bollinger, Camden, Christian, Clark, Crawford, Dade, Gentry, Greene, Grundy, Henry, Iron, Knox, Madison, Maries, Mississippi, Morgan, New Madrid, Ozark, Perry, Scotland, Scott, Shelby, St. Clair, Ste. Genevieve, Taney, Vernon, Wayne, and Worth Counties for Public Assistance.

All areas within the State of Missouri are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23225 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3596–EM; Docket ID FEMA–2023–0001]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3596–EM), dated August 28, 2023, and related determinations.

DATES: This amendment was issued August 30, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Florida is hereby amended to include the following areas among those

areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 28, 2023.

Brevard, Orange, and Osceola Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23206 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4707–DR; Docket ID FEMA–2023–0001]

Hoopla Valley Tribe; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Hoopa Valley Tribe (FEMA–4707–DR), dated April 25, 2023, and related determinations.

DATES: This amendment was issued September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 2023, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to

Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage to the lands associated with the Hoopa Valley Tribe resulting from severe winter storms and mudslides during the period of February 14 to March 5, 2023, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of April 25, 2023, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23185 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4611–DR; Docket ID FEMA–2023–0001]

Louisiana; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4611–DR), dated August 29, 2021, and related determinations.

DATES: This change occurred on August 19, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benjamin Abbott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Sandra L. Eslinger as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23227 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3597–EM; Docket ID FEMA–2023–0001]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3597–EM), dated August 31, 2023, and related determinations.

DATES: The declaration was issued August 31, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

August 31, 2023, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of South Carolina resulting from Hurricane Idalia beginning on August 29, 2023, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program in selected areas and emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the remaining areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Brian F. Schiller, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Marlboro, Orangeburg, Sumter, and Williamsburg Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

Abbeville, Aiken, Anderson, Cherokee, Chester, Chesterfield, Edgefield, Fairfield, Greenville, Greenwood, Kershaw, Lancaster, Laurens, Lexington, McCormick, Newberry,

Oconee, Pickens, Richland, Saluda, Spartanburg, Union, and York Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23178 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4722–DR; Docket ID FEMA–2023–0001]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4722–DR), dated July 19, 2023, and related determinations.

DATES: This amendment was issued September 7, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 19, 2023.

Mille Lacs and Wabasha Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23189 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4739–DR; Docket ID FEMA–2023–0001]

Wyoming; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wyoming (FEMA–4739–DR), dated September 11, 2023, and related determinations.

DATES: The declaration was issued September 11, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 11, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Wyoming resulting from flooding on June 15, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Wyoming.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jon K. Huss, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of Wyoming have been designated as adversely affected by this major disaster:

Natrona County for Public Assistance.

All areas within the State of Wyoming are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23222 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2023–0001]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 5, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2023.

Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Clay, Collier, DeSoto, Duval, Flagler, Franklin, Gadsden, Gulf, Hardee, Hillsborough, Lake, Lee, Leon, Liberty, Manatee, Marion, Nassau, Orange, Osceola, Polk, Putnam, Sarasota, Seminole, St. Johns, Sumter, Union, Volusia, and Wakulla Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23212 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4650–DR; Docket ID FEMA–2023–0001]

Washington; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4650–DR), dated March 29, 2022, and related determinations.

DATES: This change occurred on September 29, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Andrew P. Meyer as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23174 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4736–DR; Docket ID FEMA–2023–0001]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–

4736–DR), dated September 5, 2023, and related determinations.

DATES: The declaration was issued September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from a severe storm and flooding on June 29, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of Maine have been designated as adversely affected by this major disaster:

Franklin County for Public Assistance.

All areas within the State of Maine are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23217 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4539–DR; Docket ID FEMA–2023–0001]

Washington; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4539–DR), dated April 23, 2020, and related determinations.

DATES: This change occurred on September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Andrew P. Meyer as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23177 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4727–DR; Docket ID FEMA–2023–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4727–DR), dated August 12, 2023, and related determinations.

DATES: This amendment was issued September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2023.

Adams, Amite, Attala, Franklin, Greene, Holmes, Humphreys, Itawamba, Jones, Perry, Warren, and Yazoo Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23194 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4699–DR; Docket ID FEMA–2023–0001]

California; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4699–DR), dated April 3, 2023, and related determinations.

DATES: This amendment was issued September 1, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include snow assistance under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2023.

Inyo and Los Angeles Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period (already designated for Public Assistance).

San Bernardino County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period (already designated for Individual Assistance and Public Assistance).

San Mateo County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23184 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4740–DR; Docket ID FEMA–2023–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4740–DR), dated September 14, 2023, and related determinations.

DATES: The declaration was issued September 14, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 14, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding during the period of July 9 to July 17, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal

funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Belknap, Carroll, Cheshire, Coos, and Sullivan Counties for Public Assistance.

All areas within the State of New Hampshire are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23224 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4737–DR; Docket ID FEMA–2023–0001]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–4737–DR), dated September 6, 2023, and related determinations.

DATES: The declaration was issued September 6, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 6, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from a severe storm and flooding on June 26, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Oxford County for Public Assistance.

All areas within the State of Maine are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals

and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23218 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4738–DR; Docket ID FEMA–2023–0001]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4738–DR), dated September 7, 2023, and related determinations.

DATES: This amendment was issued October 2, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 7, 2023.

Berrien and Brooks Counties for Individual Assistance (already designated for Public Assistance).

Burke, Montgomery, Toombs, and Treutlen Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23221 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3596–EM; Docket ID FEMA–2023–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3596–EM), dated August 28, 2023, and related determinations.

DATES: The declaration was issued August 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2023, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Tropical Storm Idalia beginning on August 27, 2023, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to

75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Alachua, Bay, Calhoun, Charlotte, Citrus, Columbia, DeSoto, Dixie, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hardee, Hernando, Hillsborough, Jefferson, Lafayette, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Pasco, Pinellas, Polk, Sarasota, Sumter, Suwannee, Taylor, and Wakulla Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23171 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4724–DR; Docket ID FEMA–2023–0001]

Hawaii; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Hawaii (FEMA–4724–DR), dated August 10, 2023, and related determinations.

DATES: This amendment was issued August 18, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 18, 2023, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Hawaii resulting from wildfires beginning on August 8, 2023, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of August 10, 2023, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance at 100 percent of the total eligible costs for a continuous 30-day period of the State’s choosing within the first 120 days from the start of the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23191 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4735–DR; Docket ID FEMA–2023–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4735–DR), dated September 4, 2023, and related determinations.

DATES: The declaration was issued September 4, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 4, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms and straight-line winds during the period of July 18 to July 21, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the

Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Fayette, Henry, Shelby, and Tipton Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23216 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3598–EM; Docket ID FEMA–2023–0001]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3598–EM), dated September 14, 2023, and related determinations.

DATES: The declaration was issued September 14, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 14, 2023, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Maine resulting from Hurricane Lee during the period of September 15 to September 17, 2023, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Maine.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care, including evacuation and sheltering support, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Maine have been designated as adversely affected by this declared emergency:

Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington, and York Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care, including evacuation and sheltering support, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23181 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4732–DR; Docket ID FEMA–2023–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4732–DR), dated August 25, 2023, and related determinations.

DATES: The declaration was issued August 25, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 25, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from flooding during the period of April 24 to May 13, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for

Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, José M. Gil Montañez, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Allamakee, Clayton, Des Moines, Dubuque, Jackson, Lee, and Scott Counties for Public Assistance.

All areas within the State of Iowa are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23202 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3599–EM; Docket ID FEMA–2023–0001]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3599–EM), dated September 15, 2023, and related determinations.

DATES: The declaration was issued September 15, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 15, 2023, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of Massachusetts resulting from Hurricane Lee during the period of September 15 to September 17, 2023, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care, including evacuation and sheltering support, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, E. Craig Levy, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this declared emergency:

Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester Counties for

emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care, including evacuation and sheltering support, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23173 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4635–DR; Docket ID FEMA–2023–0001]

Washington; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4635–DR), dated January 5, 2022, and related determinations.

DATES: This change occurred on September 29, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Andrew P. Meyer as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23179 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0001]

Notice of Adjustment of Minimum Project Worksheet Amount

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: FEMA gives notice that the minimum Project Worksheet Amount under the Public Assistance program for disasters and emergencies declared on or after October 1, 2023, will be increased.

DATES: This adjustment applies to major disasters and emergencies declared on or after October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.202(d)(2) provides that FEMA will annually adjust the minimum Project Worksheet amount under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase to \$3,900 for the minimum amount that will be approved for any Project Worksheet under the Public Assistance program for all major disasters and emergencies declared on or after October 1, 2023.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.7 percent for the 12-month period that ended in August 2023. This is based on information released by the Bureau of Labor Statistics at the U.S. Department of Labor on September 13, 2023.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23163 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2023–0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 3, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2023.

Pinellas County for Individual Assistance. Pinellas County for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23210 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4720–DR; Docket ID FEMA–2023–0001]

Vermont; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4720–DR), dated July 14, 2023, and related determinations.

DATES: This amendment was issued September 8, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 14, 2023.

Essex County for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23186 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4738–DR; Docket ID FEMA–2023–0001]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4738–DR), dated September 7, 2023, and related determinations.

DATES: This amendment was issued September 9, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 7, 2023.

Appling, Atkinson, Bacon, Berrien, Brantley, Brooks, Bulloch, Camden, Candler, Charlton, Clinch, Coffee, Colquitt, Echols, Emanuel, Jeff Davis, Jenkins, Lanier, Pierce, Screven, Tattnall, Thomas, Tift, Ware, and Wayne Counties for Public Assistance.

Cook, Glynn, and Lowndes Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23220 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2023–0001]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued October 2, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2023.

Charlotte County for Individual Assistance and debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures, [Category B], including direct federal assistance, under the Public Assistance program).

Hillsborough County for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Baker, Duval, and Nassau Counties for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Gilchrist, Jefferson, Manatee, Pinellas, and Sarasota Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures, [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23215 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3595–DR; Docket ID FEMA–2023–0001]

Vermont; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Vermont (FEMA–3595–DR), dated July 10, 2023, and related determinations.

DATES: This amendment was issued September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective July 17, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23180 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4731–DR; Docket ID FEMA–2023–0001]

Colorado; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4731–DR), dated August 25, 2023, and related determinations.

DATES: This amendment was issued October 2, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 25, 2023.

Baca, Kiowa, Prowers, and Teller Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23201 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0001]

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters with an incident start date on or after October 1, 2023, will be increased.

DATES: This adjustment applies to major disasters with an incident start date on or after October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: In assessing damages for area designations under 44 CFR 206.40(b), FEMA uses a countywide per capita indicator to evaluate the impact of the disaster at the county level. FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to \$4.60 for all disasters with an incident start date on or after October 1, 2023.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.7 percent for the 12-month period that ended in August 2023. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 13, 2023.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23166 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2023–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: The declaration was issued August 31, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 31, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Idalia beginning on August 27, 2023, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. For a continuous 30-day period of the State's choosing within the first 120 days from the start of the incident period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Citrus, Dixie, Hamilton, Lafayette, Levy, Suwannee, and Taylor Counties for Individual Assistance.

Citrus, Dixie, Hamilton, Lafayette, Levy, Suwannee, and Taylor Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance.

For a period of 30 days of the state's choosing within the first 120 days from the start of the incident period, FEMA is authorized to provide federal funding for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, at 100 percent of the total eligible costs.

All areas within the State of Florida are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23208 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2023–0001]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 9, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2023.

Manatee and Sarasota Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Citrus, Dixie, Hamilton, Hernando, Lafayette, Levy, Madison, Suwannee, and Taylor Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Franklin, Gadsden, Leon, and Wakulla Counties for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23213 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4738–DR; Docket ID FEMA–2023–0001]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4738–DR), dated September 7, 2023, and related determinations.

DATES: The declaration was issued September 7, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 7, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from Hurricane Idalia on August 30, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Judy M. Kruger, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Cook, Glynn, and Lowndes Counties for Individual Assistance.

Cook, Glynn, and Lowndes Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of Georgia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23219 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4731-DR; Docket ID FEMA-2023-0001]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA-4731-DR), dated August 25, 2023, and related determinations.

DATES: The declaration was issued August 25, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 25, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Colorado resulting from severe storms, flooding, and tornadoes during the period of June 8 to June 23, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jon K. Huss, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Colorado have been designated as adversely affected by this major disaster:

Cheyenne, Douglas, Elbert, El Paso, Kit Carson, and Lincoln Counties for Public Assistance.

All areas within the State of Colorado are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23199 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4728-DR; Docket ID FEMA-2021-0001]

Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA-4728-DR), dated August 15, 2023, and related determinations.

DATES: This amendment was issued September 15, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include Public Assistance and Hazard Mitigation for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 15, 2023.

Christian, Clark, Coles, Cumberland, De Witt, Douglas, Edgar, Hancock, Macon, McDonough, Monroe, Morgan, Moultrie, Pike, Sangamon, Scott, Vermillion, Warren, and Washington Counties for Public Assistance.

All areas within the State of Illinois are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23196 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3596–EM; Docket ID FEMA–2023–0001]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3596–EM), dated August 28, 2023, and related determinations.

DATES: This amendment was issued August 28, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 28, 2023.

Baker, Bradford, Clay, Collier, Duval, Flagler, Lake, Nassau, Putnam, Seminole, St. Johns, Union, and Volusia Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23176 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4727–DR; Docket ID FEMA–2023–0001]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4727–DR), dated August 12, 2023, and related determinations.

DATES: This amendment was issued September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2023.

Madison County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23195 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3596–EM; Docket ID FEMA–2022–0001]

Florida; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3596–EM), dated August 28, 2023, and related determinations.

DATES: This amendment was issued September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 4, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23223 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4725–DR; Docket ID FEMA–2023–0001]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4725–DR), dated August 11, 2023, and related determinations.

DATES: The declaration was issued August 11, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 11, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a severe storm and flooding during the period of July 14 to July 15, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert Little III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Warren County for Public Assistance.

All areas within the State of New Jersey are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23193 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4733–DR; Docket ID FEMA–2023–0001]

Burns Paiute Tribe; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Burns Paiute Tribe (FEMA–4733–DR), dated August 28, 2023, and related determinations.

DATES: The declaration was issued August 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the Burns Paiute Tribe resulting from a severe storm, flooding, landslides, and mudslides during the period of June 11 to June 12, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Burns Paiute Tribe.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Burns Paiute Tribe. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

Burns Paiute Tribe for Public Assistance.

The Burns Paiute Tribe is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23203 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4682–DR; Docket ID FEMA–2023–0001]

Washington; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4682–DR), dated January 12, 2023, and related determinations.

DATES: This change occurred on September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Andrew P. Meyer as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23182 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4729–DR; Docket ID FEMA–2023–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4729–DR), dated August 17, 2023, and related determinations.

DATES: The declaration was issued August 17, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 17, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms and straight-line winds during the period of June 25 to June 26, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew D. Friend, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Fayette, Shelby, and Tipton Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23197 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4742–DR; Docket ID FEMA–2023–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4742–DR), dated September 27, 2023, and related determinations.

DATES: The declaration was issued September 27, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, straight-line winds, and tornado on August 7, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Bledsoe, Coffee, Cumberland, Jefferson, Knox, Loudon, Meigs, Rhea, Roane, and Van Buren Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23226 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0001]

Notice of Maximum Amount of Assistance Under the Individuals and Households Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2023.

DATES: This adjustment applies to emergencies and major disasters declared on or after October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Frank Matranga, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 212–1000.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5174, prescribes that FEMA must annually adjust the maximum amount for assistance provided under the Individuals and Households Program (IHP). FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Stafford Act with respect to any single emergency or major disaster is \$42,500 for housing assistance and \$42,500 for other needs assistance. The increase in award amount is for any single emergency or major disaster declared on or after October 1, 2023. In addition, in accordance with 44 CFR 61.17(c), this increases the maximum amount of available coverage under any Group Flood Insurance Policy (GFIP) issued.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.7 percent for the 12-month period, which ended in August 2023. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 13, 2023.

Catalog of Federal Domestic Assistance No. 97.048, Federal Disaster Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23168 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3597–DR; Docket ID FEMA–2023–0001]

South Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of South Carolina (FEMA–3597–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 22, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 3, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23172 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 4, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23211 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4730–DR; Docket ID FEMA–2023–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4730–DR), dated August 23, 2023, and related determinations.

DATES: The declaration was issued August 23, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from flooding during the period of May 12 to June 3, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lance E. Davis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

Copper River Regional Educational Attendance Area (REAA), Kuspuk REAA, Lower Kuskokwim REAA, Lower Yukon REAA, and Yukon Flats REAA for Individual Assistance.

Bering Strait School REAA, Copper River REAA, Kuspuk REAA, Lower Yukon REAA, and Yukon Flats REAA for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23198 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4584–DR; Docket ID FEMA–2023–0001]

Washington; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4584–DR), dated February 4, 2021, and related determinations.

DATES: This change occurred on September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Andrew P. Meyer as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23207 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4720–DR; Docket ID FEMA–2023–0001]

Vermont; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Vermont (FEMA–4720–DR), dated July 14, 2023, and related determinations.

DATES: This amendment was issued September 19, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now July 7, 2023, through and including July 21, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23187 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4721–DR; Docket ID FEMA–2023–0001]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4721–DR), dated July 19, 2023, and related determinations.

DATES: This amendment was issued September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 19, 2023.

Choctaw and Pawnee Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23188 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4724–DR; Docket ID FEMA–2023–0001]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4724–DR), dated August 10, 2023, and related determinations.

DATES: The declaration was issued August 10, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 10, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in the State of Hawaii resulting from wildfires beginning on August 8, 2023, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Maona N. Ngwira, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Hawaii have been designated as adversely affected by this major disaster:

Maui County for Individual Assistance.

Maui County for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

Hawaii County for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Hawaii are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23190 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4724–DR; Docket ID FEMA–2023–0001]

Hawaii; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–4724–DR), dated August 19, 2023, and related determinations.

DATES: This change occurred on August 28, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Maona N. Ngwira as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–23192 Filed 10–19–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4734–DR; Docket ID FEMA–2023–0001]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4734–DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 11, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas to the areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2023.

Manatee and Sarasota Counties for debris removal [Category A] (already designated for Individual Assistance and assistance for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23214 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4734-DR; Docket ID FEMA-2023-0001]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-4734-DR), dated August 31, 2023, and related determinations.

DATES: This amendment was issued September 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2023.

Columbia, Gilchrist, Hernando, Jefferson, Madison, and Pasco Counties for Individual Assistance.

Columbia, Gilchrist, Hernando, Jefferson, Madison, and Pasco Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23209 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0001]

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of an adjustment to the threshold for Small Project subgrants made to State, Tribal, and local governments and private nonprofit facilities for disasters declared on or after October 1, 2023.

DATES: This adjustment applies to major disasters and emergencies declared on or after October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-3834.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, as amended by the Sandy Recovery Improvement Act, Public Law 113-2, provides that FEMA will annually adjust the threshold for assistance provided under section 422, Simplified Procedures, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that \$1,037,000 is the threshold for any Small Project subgrant made to State, Tribal, and local governments or to the owner or operator of an eligible private nonprofit facility under section 422 of the Stafford Act for all major disasters or emergencies declared on or after October 1, 2023.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.7 percent for the 12-month period that ended in August 2023. This is based on information released by the Bureau of Labor Statistics at the U.S. Department of Labor on September 13, 2023.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23165 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0001]

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters with an incident start date on or after October 1, 2023, will be increased.

DATES: This adjustment applies to major disasters with an incident start date on or after October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to \$1.84 for all disasters with an incident start date on or after October 1, 2023.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.7 percent for the 12-month period that ended in August 2023. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 13, 2023.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23167 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4731-DR; Docket ID FEMA-2023-0001]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA-4731-DR), dated August 25, 2023, and related determinations.

DATES: This amendment was issued September 20, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 25, 2023.

Arapahoe, Logan, and Washington Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-23200 Filed 10-19-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Notice of Adoption of the Department of Energy Electric Vehicle Charging Stations Categorical Exclusion Pursuant to Section 109 of the National Environmental Policy Act**

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of adoption of the Department of Energy's electric vehicle charging stations categorical exclusion pursuant to section 109 of the National Environmental Policy Act.

SUMMARY: The Department of Homeland Security (DHS) is adopting the Department of Energy's (DOE) electric vehicle charging stations categorical exclusion (CE) pursuant to section 109 of the National Environmental Policy Act to use for proposed DHS actions. This notice describes the categories of proposed actions for which DHS intends to use DOE's electric vehicle charging stations CE and details the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Jennifer DeHart Hass, Director, Environmental Planning and Historic Preservation, by phone at 202-834-4346, or by email at jennifer.hass@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background***National Environmental Policy Act and Categorical Exclusions*

The National Environmental Policy Act, 42 U.S.C. 4321-4347 (NEPA), requires all Federal agencies to assess the environmental impacts of their actions. Congress enacted NEPA to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact

statement (EIS), environmental assessment (EA), or categorical exclusion. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. *Id.* If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. *Id.* 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency may establish in its NEPA implementing procedures categorical exclusions, which are categories of actions the agency has determined normally do not significantly affect the quality of the human environment. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a categorical exclusion covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the categorical exclusion to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2). If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established. 42 U.S.C. 4336c. To adopt another agency's categorical exclusion under Section 109, an agency must identify the relevant categorical exclusion listed in that agency's ("establishing agency") NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate; identify to the public the categorical exclusion that the

agency plans to use for its proposed actions; and document adoption of the categorical exclusion. *Id.*

This notice documents DHS's adoption of DOE's electric vehicle charging stations CE under section 109 of NEPA.

II. Identification of the Categorical Exclusion

DOE's Electric Vehicle Charging Stations Categorical Exclusion

DOE's electric vehicle charging stations categorical exclusion (CE) is codified in DOE's NEPA procedures as CE B5.23 in 10 CFR part 1021, subpart D, appendix B, as follows:

B5.23 Electric Vehicle Charging Stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

"Previously disturbed or developed" refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed State, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. 10 CFR 1021.410(g)(1).

The DOE electric vehicle charging stations CE also includes additional conditions referred to as integral elements. (10 CFR part 1021 subpart D, app. B). In order to apply the CE, the proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DHS¹ or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal,

recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, State, or local government, federally recognized Indian Tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or federally-proposed or candidate species or their habitat (Endangered Species Act); State-listed or State-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands

(iv) Areas having a special designation such as federally- and State-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead

protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

Proposed DHS Category of Actions

The electric vehicle charging stations CE allows for the installation, modification, operation, and removal of electric vehicle charging stations. The CE could be applied to DHS and its Components' electric vehicle charging station projects, including installation, operation, modification, and removal of electric vehicle charging stations at existing DHS owned or occupied facilities. Reducing the Department's reliance on fossil fuels and reducing emissions across the Department will improve sustainability in accordance with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*. DHS is actively working to transition its fleet to electric vehicles to meet these requirements across all Components. In support of fleet electrification, infrastructure is necessary to support charging of the vehicles and DHS is in the process of establishing electric vehicle charging stations at existing DHS owned and occupied facilities across the United States.

DHS will consider each proposal for electric vehicle charging stations to ensure that the proposal is within the scope of the CE. DHS intends to apply this categorical exclusion to the same types of proposals to which DOE has applied the CE, which have included a wide variety of locations on and off federal property, differences in local conditions, various numbers of electric vehicle charging stations per proposal, and different types of equipment and technologies including Level 1, Level 2, and DC Fast Charging stations.

III. Consideration of Extraordinary Circumstances

When applying this CE, DHS will evaluate the proposed action to ensure evaluation of integral elements listed above. In addition, in considering extraordinary circumstances, DHS will consider whether the proposed action has the potential to result in significant

¹ Modified from CFR part 1021 subpart D, app. B to reflect DHS as the adopting agency.

effects as described in DOE's extraordinary circumstances listed at 10 CFR 1021.410(b)(2). DOE defines extraordinary circumstances as unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources. Consistent with DHS Instruction Manual 023-01-001-01, *Implementing the National Environmental Policy Act* (DHS Instruction Manual), DHS will document utilization of this CE and consideration of extraordinary circumstances within the DHS Environmental Planning and Historic Preservation Decision Support System.

IV. Consultation With DOE and Determination of Appropriateness

DHS and DOE consulted on the appropriateness of DHS's adoption of the electric vehicle charging stations CE from June 2023 through September 2023. This consultation included a review of DOE's experience developing and applying the CE and the types of actions for which DHS plans to utilize the CE. Based on this consultation and review, DHS has determined that the types of projects it intends to undertake to install, operate, modify, and remove electric vehicle charging stations at its facilities are substantially similar to such projects for which DOE has applied the CE. Accordingly, the impacts of DHS projects will be substantially similar to the impacts of DOE projects, which are not significant, absent the existence of extraordinary circumstances. Therefore, DHS has determined that its proposed use of the electric vehicle charging stations CE, as described within this notice, would be appropriate.

Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document DHS's adoption of DOE's categorical exclusion for electric vehicle charging stations and identifies the types of actions to which DHS will apply the CE, and the considerations DHS will use in determining whether an action is within the scope of the CE. Upon issuance of this notice, the adopted electric vehicle charging stations CE will be available to DHS and

accessible at www.dhs.gov/national-environmental-policy-act.

Tracey L. Watkins,

*Deputy Chief Readiness Support Officer,
Department of Homeland Security.*

[FR Doc. 2023-23134 Filed 10-19-23; 8:45 am]

BILLING CODE 9112-FF-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-76]

30-Day Notice of Proposed Information Collection: Multifamily Project Monthly Accounting Reports, OMB Control No.: 2502-0108

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* November 20, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email: Colette.Pollard@hud.gov; telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and

communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 18, 2022 at 87 FR 69290.

A. Overview of Information Collection

Title of Information Collection: Multifamily Project Monthly Accounting Reports.

OMB Approval Number: 2502-0108.

OMB Expiration Date: September 30, 2020.

Type of Request: Reinstatement, without change, of previously approved collection for which approval has expired.

Form Number: HUD-93479, HUD-93480, and HUD-93481.

Description of the need for the information and proposed use: This information is necessary for HUD to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels.

Respondents: Business and other for profit and non-profit entities.

Estimated Number of Respondents: 8,192.

Estimated Number of Responses: 1,638.

Frequency of Response: 12.

Average Hours per Response: 0.08 each.

Total Estimated Burden: 4,719 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those

who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023–23151 Filed 10–19–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAK001030/
A0A501010.999900]

Johnson-O'Malley Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Report.

SUMMARY: Under the Johnson-O'Malley (JOM) Act of 1934, as amended by the JOM Supplemental Indian Education Program Modernization Act of 2018, the Bureau of Indian Education (BIE) is publishing a Final Report that describes the initial determination of the number of eligible Indian students served or potentially served by each eligible entity, the data used for BIE to make such determination, feedback gained during the comment period, and justification for not applying feedback gained during the comment period.

FOR FURTHER INFORMATION CONTACT:

Spike Bighorn, Program Manager, Office of Sovereignty in Indian Education, Bureau of Indian Education, via email at spike.bighorn@bie.edu or telephone at (202) 499–0482.

SUPPLEMENTARY INFORMATION: The Johnson-O'Malley Supplemental Indian Education Program Modernization Act of 2018, Public Law 115–404, directed the Secretary of the Interior (Secretary) to publish a preliminary report describing the number of eligible Indian students served or potentially served by each eligible entity, using the most applicable and accurate data from the

fiscal year preceding the fiscal year for which the initial determination is to be made. See 84 FR 57880, dated October 29, 2019. The 60-day comment period ended on December 30, 2019.

The BIE received feedback on the preliminary report from four entities. On June 16, 2022, BIE submitted to Congress a final report (JOM Final Report) on the initial determination of the number of eligible Indian students served or potentially served by each eligible entity, including justification for not including feedback gained during the consultation period. On July 14, 2023, BIE published the JOM Final Report on the BIE website where it remains publicly available at <https://www.bie.edu/supplemental-education-programs>.

Brian Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–23148 Filed 10–19–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[220D2641EA; DS61830000;
DEA100000.000000; DX61801; Docket No.
DOI–2023–0014]

Request for Information To Inform the Orphaned Wells Program Office's Development of Regulatory Improvement Grants Under the Bipartisan Infrastructure Law

AGENCY: Orphaned Wells Program Office, Department of the Interior.

ACTION: Request for information.

SUMMARY: The Orphaned Wells Program Office (OWPO) invites public comment to help inform its efforts in determining how to best structure the Regulatory Improvement Grant (RIG) program, pursuant to section 40601 of the Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law (Act).

DATES: Respondents are invited to submit comment to the OWPO by December 19, 2023.

ADDRESSES: Comments may be submitted through <https://www.regulations.gov> and will be available for public viewing and inspection. This request can be located by typing the Docket number DOI–2023–0014 in the [regulations.gov](https://www.regulations.gov) search box. For best results, do not copy and paste the number. Instead, type the Docket number into the search box, including the hyphens. Comments are submitted by clicking “Comment.”

FOR FURTHER INFORMATION CONTACT:

Susan Lee, Division Chief, State Orphaned Wells Program, OWPO, (202) 579–1907 or by email at susan_lee@ios.doi.gov. Or contact the OWPO by email at orphanedwells@ios.doi.gov.

SUPPLEMENTARY INFORMATION: The Act is a once-in-a-generation investment in our nation's infrastructure and economic competitiveness. The Act, which is codified at 42 U.S.C. 15907, creates a plugging, remediation, and restoration program within the Department of the Interior (DOI) to address orphaned wells, well sites, associated pipelines, facilities, infrastructure, habitats, soil remediation, tracking emissions of methane and other gases, tracking of ground and surface water contamination, located on Federal lands, Tribal lands, and state and private lands.

Under the Act, states may be eligible to receive the following types of grants awarded, administered, and overseen by the OWPO: Initial Grants, Formula Grants, and Performance Grants. There are two categories of Performance Grants: Matching Grants and RIGs. The Act makes \$1.5 billion available to DOI for distribution to eligible states for Performance Grants. A state that received an Initial Grant is eligible to apply for and receive two separate RIGs, if the state meets one or both of the following conditions during the 10-year period that precedes its application:

(I) The state has strengthened plugging standards and procedures designed to ensure that wells located in the state are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment (Plugging Standards).

(II) The state has made improvements to state programs designed to reduce future orphaned well burdens, such as financial assurance reform, alternative funding mechanisms for orphaned well programs, and reforms to programs relating to well transfer or temporary abandonment (Program Standards).

A state may apply for and receive one RIG of up to \$20 million for each of the above Standards, meaning a state may receive up to a total of \$40 million in RIGs. RIGs are subject to available appropriations and grant application window deadlines. All RIG funds must be obligated by the state within five years of the effective date of the award.

On January 10, 2023, Secretary Haaland issued Order 3409, which established the OWPO to ensure effective, accountable, and efficient implementation of the Act. The OWPO invites public comment to inform the

OWPO's efforts as to how to best structure the RIG program. This includes information from the public regarding factors the OWPO may use in evaluating RIG applications.

Questions

Applicable to Both RIG Criteria

1. Should a specific amount of the \$1.5 billion in Performance Grant funds be set aside for Regulatory Improvement Grants? Similarly, should a specific amount be set aside for Plugging Standards and Program Standards?

2. A state that receives a RIG shall reimburse the United States the amount of the grant if, during the 10-year period beginning on the date of receipt of the grant, the state enacts a law or regulation that, if in effect on the date of submission of the application, would have prevented the state from being eligible to receive the grant. What would be the most effective and administratively prudent way to address this requirement (e.g., an annual audit, certifications to attest to compliance, on-site reviews, etc.)?

3. Different states may require different standards, financial reform methodology, and policies or procedures. Is there a recommended amount of time that the revised standards, methodologies, policies, or procedures should be in effect prior to applying for a RIG?

4. What metrics or factors should the OWPO use for measuring and evaluating the improvements a state makes to its plugging standards or procedures (Plugging Standard RIG) and actions a state may take to reduce future orphaned well burdens (Program Standard RIG)? How can the OWPO ensure for the public that actions states take will achieve the intended purposes?

5. Should a RIG be an all-or-nothing grant, whereby an applying state either receives the full \$20 million or nothing based on a threshold criteria? Or, should a RIG award be some portion of \$20 million based on how the state's application scores on a series of factors?

6. What are the best practices pertaining to effective methods, policies, plugging approaches, or actions a state may use to avoid future issues or address past issues with failed partial plugging of wells (e.g., oil and gas wells partially plugged and converted to water wells)?

Applicable to Plugging Standards RIGs

1. What should be considered as "standards and procedures" when evaluating grant applications and awarding RIG grants (e.g., laws or

regulations, taxes or tax incentives, utilization of public funds, and fees or assessments, state personnel and staffing)?

2. What factors or elements should be considered in evaluating whether a standard or procedure is intended to ensure that orphaned wells are plugged "in an effective manner"? Should specific factors or elements be weighed more heavily than others? Are there best practices for determining effective well plugging?

3. Is there a specific regulatory entity (i.e., Federal agency, state agency, Tribal agency, non-United States jurisdictions) that has performed the best in ensuring oil or gas wells are properly plugged and abandoned, and that the associated surface has been restored?

4. What are the standards and procedures used by the above specific entity that were most effective in ensuring that oil or gas wells were properly plugged and abandoned, and that the associated surface has been restored?

5. What elements or factors should be considered in determining whether an entity has plugged a well effectively? Similarly, what elements or factors should be considered in determining whether the associated surface has been restored? Do standards or best practices exist? If so, what are they?

6. Are there any particular standards or procedures, or lack of addressing certain aspects in standards or procedures, that should disqualify a state from receiving a Plugging Standards RIG? If so, what are they and why?

7. What is the best approach for identifying the ways in which a state's plugging standards and processes have been strengthened to achieve proper plugging and abandoning of oil and gas wells? What is the best approach for measuring or quantifying the ways in which a state's previous standards and processes were adequate or inadequate?

8. What factors or elements should be considered when evaluating whether a standard or procedure will affect each of the following: (1) groundwater; (2) public health and safety; and (3) natural resources or the environment?

9. Should the evaluation of a state's application be based on a criteria that focuses on the text and structure of the state's plugging standards and procedures that are specifically identified in the application, or should an approach be taken whereby an applicant state is free to implement any standards or procedures, and take any resulting action, so long as the state can demonstrate how its actions will protect groundwater and other natural

resources, public health and safety, and the environment? If the later approach is taken, how might a state demonstrate effectiveness in protection of groundwater, natural resources, public health and safety and the environment?

10. Are there any other thoughts, innovative approaches, or comments pertaining to the administration of the RIG program?

Applicable to Program Standards RIGs

1. What changes to state programs designed to reduce orphaned well burdens should be considered in evaluating a state's Program Standards RIG application? Should the improvements include changes to procurement, budgeting, staffing, or other actions of state governance?

2. What factors, elements, or benchmarks should be used to evaluate a state's financial assurance reforms? Is there a state or other entity that has the best financial assurance requirements to reduce the orphaning of wells?

3. What factors, elements, or benchmarks should be used to evaluate a state's alternative funding mechanisms for orphaned well programs? Is there a state or other entity that has strong alternative funding mechanisms for orphaned well programs?

4. What factors, elements, or benchmarks should be used to evaluate a state's reforms to programs relating to well transfer or temporary abandonment? Is there a state or other entity that has strong programs related to well-transfer or temporary abandonment?

5. What state actions are likely to *increase* future orphaned well burdens on the state, and why? How should those actions be reversed?

6. Should the evaluation of a state's application be based on criteria that focuses on the text and structure of the programs identified in the application, or should an approach be taken whereby an applicant state is free to implement any programs it sees fit, so long as the state can show how its programs are designed to reduce future orphaned well burdens?

7. What are the most effective methods or best practices a state may use to compel companies to properly plug and abandon wells at the end of their useful life? Are there states or other entities that are currently implementing those?

8. What are effective methods or best practices a state may use to prevent a company from transferring its liability for plugging and reclamation to another party that may become financially insolvent, or will otherwise be unable to properly plug and abandon a well?

9. What types of state enforcement actions, policies, and procedures have been found to result in timely well plugging and how might they be applicable in evaluating a RIG application?

10. Is joint and several liability an effective means to prevent taxpayers from eventually paying for plugging and reclaiming orphaned wells, and how could or should joint and several liability be incorporated into Program Standards? Similarly, is an assignor's retention of well-plugging liability an effective means to prevent a State's taxpayers from being liable, in the future, for plugging orphaned wells? Why or why not? And if so, how could or should retention of assignor liability be incorporated into Program Standards?

11. Are financial strength tests an effective method to gauge whether operators will likely meet plugging, remediation, and decommissioning requirements? If so, are there specific criteria a state should incorporate into its financial strength tests?

12. How should idle wells and a state's approach to managing idle wells be factored into the development and administration of Program Standards for RIGs?

13. Are there any other thoughts or comments that should be considered pertaining to the administration of the RIG program?

Kimbra Davis,

*U.S. Department of the Interior, Director
Orphaned Wells Program Office.*

[FR Doc. 2023–23146 Filed 10–19–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ES_FRN_MO4500174413]

Notice of Mailing/Street Address Change for the BLM Northeastern States District Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces changes to the mailing and street address for the Northeastern States District Office of the Bureau of Land Management (BLM).

DATES: The date for the changes will be on or about November 1, 2023.

FOR FURTHER INFORMATION CONTACT: Richard Navarro, Assistant District Manager for Support Services, BLM Northeastern States District; (414) 297–

4419; rdnavarro@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 7–1–1 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The mailing and street address for the BLM Northeastern States District Office will be changed from 626 E Wisconsin Ave., Suite 200, Milwaukee, Wisconsin 53202 to 250 E Wisconsin Ave., Suite 1100, Milwaukee, Wisconsin 53202.

Authority: Departmental Manual 382, Chapter 2.1.

Mitchell Leverette,

BLM Eastern States State Director.

[FR Doc. 2023–23170 Filed 10–19–23; 8:45 am]

BILLING CODE 4331–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500173143]

Notice of Availability of the Draft Hult Reservoir and Dam Safety Environmental Impact Statement in Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the Hult Reservoir and Dam Safety Draft Environmental Impact Statement (EIS).

DATES: To afford the BLM the opportunity to consider comments in the Final EIS, please ensure that the BLM receives your comments within 45 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. The BLM will hold at least one public meeting in Blachly, Horton, or Triangle Lake; the date(s) and location(s) of public meetings will be announced at least 15 days in advance on the BLM National NEPA Register at: <https://eplanning.blm.gov/eplanning-ui/project/99598/510>. Interested parties can also register for email notifications of the scoping meetings by submitting

an email request to: BLM_OR_NO_SIU_Hult_Dam_EIS@blm.gov.

ADDRESSES: The Draft EIS is available for review on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/99598/510>.

Written comments related to the Hult Reservoir and Dam Safety Draft EIS may be submitted by any of the following methods:

- **ePlanning website:** <https://eplanning.blm.gov/eplanning-ui/project/99598/510>.

- **Email:** BLM_OR_NO_SIU_Hult_Dam_EIS@blm.gov.

- **Mail:** Bureau of Land Management, Northwest Oregon District, ATTN: Hult Reservoir and Dam Safety EIS, 3106 Pierce Parkway, Springfield, OR 97477.

Documents pertinent to this proposal may be examined online at <https://eplanning.blm.gov/eplanning-ui/project/99598/510> and at the Siuslaw Field Office, 3106 Pierce Pkwy., Springfield, OR 97477.

FOR FURTHER INFORMATION CONTACT:

Dianne Olson, Public Involvement Lead, at (971) 213–4970 or BLM_OR_NO_SIU_Hult_Dam_EIS@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Olson. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Hult Reservoir and Hult Pond Dam are located near the community of Horton, Oregon. The reservoir is fed by Lake Creek and smaller tributaries. The earthen embankment dam was built in the 1930s or 1940s to create a log holding pond for the Hult Lumber Company sawmill. Today, the 54-acre reservoir and surrounding area are primarily used as a recreation destination. The dam serves no other water retention purposes and provides no flood protection. The average lifespan for an earthen embankment dam is 50 years, which the Hult Dam has exceeded by over 3 decades. The BLM believes that the dam it is at the end of its lifecycle.

When the BLM took ownership of the reservoir and dam in a 1994 land exchange, the dam had been poorly maintained, but a 1990 Bureau of Reclamation inspection found it was in no immediate danger of failing. Since then, the BLM has made improvements to the dam, including repairs, reinforcement, and installation of

monitoring equipment. BLM staff continuously monitor the reservoir level and adjust the dam outlet during winter weather events to avoid overtopping.

In 2017, the U.S. Army Corps of Engineers (USACE) inspected the dam and found multiple failure points due to its age and condition. The 2018 USACE report based on this inspection described that flooding resulting from dam failure could impact 70 to 130 people downstream and cause damage to Oregon Highway 36, as well as potential loss of life.

The project's purpose and need is to decommission the current Hult Dam structure to reduce the potential for failure of the aging structure and associated loss of life and critical services, and to be fiscally responsible to the public in managing the costs associated with the dam.

The Draft EIS includes a No Action Alternative (Alternative 1) analyzing continued management and standard maintenance of Hult Dam under the current conditions. The BLM analyzed three action alternatives in detail:

Alternative 2 (Remove the Existing Dam and Build a New Dam to Maintain Hult Reservoir) responds to public comments received during the EIS scoping period. This alternative would remove all existing dam infrastructure and build a new dam that meets necessary safety standards and a new bridge. The poorly functioning fish ladder would be replaced with a roughened channel to allow fish passage. Construction would take place over 3 years, and dam construction would happen during summer months when water levels would be lowest.

This alternative includes the creation of a developed camp host site and cultural design features including signage with information about the area's original indigenous inhabitants and the lumber mill previously located near the reservoir.

Alternative 3 (Remove Hult Reservoir; Add Little Log Pond) would permanently remove existing dam infrastructure and drain Hult Reservoir, allowing a natural stream course to reestablish through the former reservoir footprint. A new bridge would span the stream channel near the current dam, replacing the existing bridge and road across the dam.

A 5-acre pond for recreational use would be created downstream by building a smaller dam across Lake Creek. This pond could be used for fishing, swimming, and non-motorized boating. A roughened channel south of the pond would be created to allow fish passage. This work would take place over approximately 2 years, during

summer months, when water levels would be lowest.

Project design features would include:

- Riparian and wetland restoration in the former reservoir area, with the creation of habitat for fish, western pond turtles, and beavers;

- Improved recreation amenities, including a new day-use area near the pond, a developed camp host site and a group campsite, and a multi-use trail adjacent to the pond and restoration area; and

- Cultural design features, including signage with information about the area's original indigenous inhabitants and the lumber mill previously located at the site.

Alternative 4 (Remove Hult Reservoir) is the preferred alternative and would permanently remove existing dam infrastructure. Hult Reservoir would be drained, and a natural stream channel would be reestablished through the former reservoir footprint. A new bridge would span the stream channel near the current dam, replacing the existing bridge and road across the dam. This work would take place during summer months, when water levels would be lowest.

Project design features are similar to those for Alternative 3, including:

- Riparian and wetland restoration in the former reservoir area, with the creation of habitat for fish, western pond turtles, and beavers;

- Improved recreation amenities, including a new day-use area, a developed camp host site and a group campsite, and a multi-use trail adjacent to the restoration area; and

- Cultural design features including signage with information about the area's original indigenous inhabitants and the lumber mill previously located at the site.

Nine other alternatives were considered but not analyzed in detail because they did not meet the EIS purpose and need or were infeasible.

The public scoping period for the project was held in January 2022. Issues identified by the public included changes to recreation access and opportunities such as fishing, swimming, and boating; effects to wildlife, plants, ecosystems, fish and fish passage; effects to the local economy and community; availability of water for fire suppression; impacts on water quality, availability, and rights; and impacts on local Tribes.

Formal cooperating agencies on this EIS include:

- Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon
- Confederated Tribes of Grand Ronde

- Oregon Department of Fish and Wildlife

- Oregon Department of Forestry—Lane County

- U.S. Army Corps of Engineers—Regulatory Branch

With all formal cooperating agencies, the BLM has signed a memorandum of understanding identifying the roles and responsibilities of the BLM and the cooperating agency in the planning process.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. The Confederated Tribes of Umpqua, Coos, and Lower Siuslaw Indians and Confederated Tribes of Grand Ronde are cooperators on the project, and the BLM has been receiving their input during the EIS process.

The BLM will be holding at least one public meeting in Blachly, Horton, or Triangle Lake; the date(s) and location(s) of public meetings will be announced at least 15 days in advance on the BLM National NEPA Register at: <https://eplanning.blm.gov/eplanning-Sui/project/99598/510>. Interested parties can also register for email notifications of the scoping meetings by submitting an email request to: BLM_OR_NO_SIU_Hult_Dam_EIS@blm.gov.

During the 45-day public comment period, written comments on the draft EIS may be submitted by mail, email, or on the ePlanning website (see Address section above). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

Amanda Hoffman,

Acting District Manager, Northwest Oregon.

[FR Doc. 2023-23140 Filed 10-19-23; 8:45 am]

BILLING CODE 4331-24-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_AK_FRN_MO4500174129]****Notice of Availability of the Ambler Road Draft Supplemental Environmental Impact Statement, Alaska****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) announces the availability of a Draft Supplemental Environmental Impact Statement (EIS) for the proposed Ambler Road project.

DATES: To afford the BLM the opportunity to consider comments in the Final Supplemental EIS, please ensure that the BLM receives your comments within 60 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the Draft Supplemental EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. The BLM will hold public meetings and subsistence hearings in the vicinity of potentially affected communities. The dates, times, and locations of the meetings will be announced in advance through public notices, media releases, and/or mailings.

ADDRESSES: The Draft Supplemental EIS is available for review on the BLM ePlanning project website at <https://www.blm.gov/AmblerRoadEIS>. You may submit written comments related to the Ambler Road Draft Supplemental EIS by any of the following methods:

- Website: <https://www.blm.gov/AmblerRoadEIS>.
- Mail: Ambler Road Draft Supplemental EIS Comments, BLM Fairbanks District Office, 222 University Avenue, Fairbanks AK 99709.
- Hand Deliver comments to: BLM, 222 University Avenue, Fairbanks, Alaska 99709.

Documents pertinent to this proposal may be examined: online at <https://www.blm.gov/AmblerRoadEIS>; at the BLM Alaska State Office, BLM Alaska Public Information Center, 222 West 7th Avenue (First Floor), Anchorage, Alaska; or at the Fairbanks District Office, 222 University Avenue, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Stacie McIntosh, Ambler Road Supplemental EIS Project Manager,

telephone: 907-474-2398; email address: s05mcint@blm.gov. You may also request to be added to the mailing list for the Supplemental EIS.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. McIntosh. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The BLM has prepared the Ambler Road Draft Supplemental EIS. The Draft Supplemental EIS is in response to an application for an industrial road right-of-way (ROW) in north-central Alaska across federal public lands and other lands that was initially approved through a Joint Record of Decision (JROD) issued in July 2020, by the BLM and the U.S. Army Corps of Engineers, after publication of the original Ambler Road EIS in March 2020. The road would run from the existing Dalton Highway to the Ambler Mining District. The area involved lies south of the Brooks Range, north of the Yukon River, west of the Dalton Highway and east of the Purcell Mountains. The Alaska Industrial Development and Export Authority, a public corporation of the State of Alaska, is the applicant.

In May 2022, in two lawsuits challenging the JROD and associated environmental analyses, the U.S. District Court for the District of Alaska (District Court) granted voluntary remand at the request of the Department of the Interior (DOI) due to deficiencies in the BLM's analysis of subsistence impacts under Alaska National Interest Lands Conservation Act (ANILCA) Section 810 and consultation with Tribes pursuant to Section 106 of the National Historic Preservation Act (NHPA). In the motion for remand, the DOI committed to address the identified legal deficiencies, consider new information about declines in salmon and caribou populations, reconsider the appropriate scope of the area of potential effects for purposes of the NHPA, and supplement the EIS, as appropriate, to more thoroughly assess the impacts and resources identified as areas of concern in the two lawsuits challenging the now-remanded JROD.

The Draft Supplemental EIS analyzes: the No Action Alternative; Alternative A, the applicant's 211 mile-long proposed road alignment beginning at Mile 161 of the Dalton Highway and extending west, ending at the Ambler

River; Alternative B, which starts and ends in the same location as Alternative A but contains a shorter route through Gates of the Arctic National Preserve; and Alternative C, an alternate route that starts at Mile 59.5 of the Dalton Highway and extends 332 miles northwest, ending at the Ambler River. The Army Corps of Engineers is a cooperating agency on the Supplemental EIS.

Section 810 of ANILCA requires BLM to evaluate the effects of the alternatives presented in the Draft Supplemental EIS on subsistence uses and needs, and to hold public hearings if it finds that any alternative may significantly restrict subsistence uses. The BLM has found in the evaluation of subsistence impacts that Alternatives A, B, and C and the cumulative case analyzed in the Draft Supplemental EIS may significantly restrict subsistence uses in multiple communities. Therefore, the BLM will hold public hearings on subsistence resources and activities in conjunction with the public meetings on the Draft Supplemental EIS in the vicinity of potentially affected communities. Information about subsistence hearings will be available on the project website listed in the **ADDRESSES** section, and will be announced through additional public notices, news releases, and mailings.

The input of Alaska Native Tribes and Corporations is of critical importance to this Supplemental EIS. Therefore, during the NEPA process, the BLM will continue to consult with potentially affected federally recognized Tribes on a government-to-government basis, and with affected Alaska Native Corporations in accordance with Executive Order 13175, as well as Public Law 108-199, Div. H, sec. 161, 118 Stat. 452, as amended by Public Law 108-447, Div. H, sec. 518, 118 Stat. 3267, and other Department and Bureau policies. We respectfully request participation in consultation by Alaska Native Tribes and Alaska Native Corporations to provide their views and recommendations on the analysis, including effects from the proposed activities. The BLM will hold individual consultation meetings upon request.

It is important that reviewers provide their comments at such times and in such manner as are useful to the agency's preparation of the Final Supplemental EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

Comments submitted anonymously will be accepted and considered.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6(b)

Steven M. Cohn,

State Director, Alaska.

[FR Doc. 2023–22870 Filed 10–19–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NDM_21192]

Public Land Order No. 7932; Withdrawal for Dash Lake Waterfowl Production Area; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) withdraws 13.50 acres of public land from appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, subject to valid existing rights, for 100 years, and reserves the land for 100 years for management by the U.S. Fish and Wildlife Service as part of the Dash Lake Waterfowl Production Area (WPA) in Towner County, North Dakota.

DATES: This PLO takes effect on October 20, 2023.

FOR FURTHER INFORMATION CONTACT:

Cyndi Eide, Realty Specialist, Bureau of Land Management, Montana/Dakotas State Office, telephone (406) 896–5094, email: ceide@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This withdrawal places these lands under the management of the Department of the Interior, U.S. Fish and Wildlife Service,

pursuant to the National Wildlife Refuge System Administration Act (NWRSA) at 16 U.S.C. 668dd, as part of the Dash Lake WPA. These lands were previously withdrawn and reserved as part of the refuge for a 40-year term under PLO No. 6225 (47 FR 11675), which expired on March 17, 2022. Under the NWRSA at 16 U.S.C. 668dd(a)(6), once land is included as part of the Refuge System via public land withdrawal, it remains part of the System until otherwise specified by an Act of Congress. This Order reflects the prior withdrawal and reservation and withdraws the land from the laws specified to protect the land from uses incompatible with Refuge purposes.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, and reserved for administration by the U.S. Fish and Wildlife Service for wildlife refuge purposes as part of the Dash Lake WPA.

Fifth Principal Meridian, North Dakota

T. 163 N., R. 65 W.,

Sec. 5, lot 3.

The area described contains 13.50 acres.

2. This withdrawal will expire 100 years from the effective date of this order, unless as a result of a review conducted before the expiration date, pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714)

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–23183 Filed 10–19–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500173630]

Notice of Extension of Segregation of Public Lands for the Copper Rays Solar Project, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation extension.

SUMMARY: The Bureau of Land Management (BLM) on October 21, 2021, segregated public lands included in the right-of-way application (N–089655) for the Copper Rays Solar Project from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years subject to valid existing rights. This 2-year extension of the segregation is necessary for the orderly administration of the public lands in order to allow the BLM to complete review of the Copper Rays Solar Project application and reach a decision on the application.

DATES: This segregation extension for the lands identified in the notice of segregation published in the **Federal Register** on October 21, 2021 (86 FR 58301) takes effect on October 21, 2023.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the project mailing list, send requests to: Whitney Wirthlin, Southern Nevada District Energy and Infrastructure Team, at telephone (702) 515–5284; address 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301; or email BLM_NV_SND_EnergyProjects@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Whitney Wirthlin. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This notice extends the segregation published in the **Federal Register** on October 21, 2021 (86 FR 58301) for an additional 2 years. Copper Rays Solar, LLC, a subsidiary of Leeward Renewable Energy, LLC, submitted a right-of-way application to the BLM Pahrump Field Office for the Copper Rays Solar Project requesting authorization to construct, operate, maintain, and eventually decommission a 700-megawatt

photovoltaic solar electric generating facility, battery storage facilities, associated generation tie-line, and access road facilities.

The BLM has made substantial progress in the review of the Copper Rays Solar Project right-of-way application; however, the BLM needs additional time to complete the review and make a decision on the application. The BLM completed the application evaluation determination process required by regulations found at 43 CFR part 2800 and determined it was appropriate to continue processing the application. On November 14, 2022, the BLM published a Notice of Intent to Amend the Las Vegas Resource Management Plan and Prepare an Environmental Impact Statement for the Proposed Copper Rays Solar Project in Nye County, Nevada in the **Federal Register** (87 FR 68187). The BLM is currently preparing the Draft Resource Management Plan Amendment/Environmental Impact Statement.

Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f).

Jon K. Raby,

Nevada State Director.

[FR Doc. 2023–23350 Filed 10–19–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000–L14400000–ET0000; CACA–054374]

Public Land Order No. 7931; Withdrawal of National Forest System Land in the San Bernardino National Forest; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This Public Land Order (PLO) withdraws 2,841 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, or disposal under the Mineral Materials Act of 1947, for a period of 50 years, subject to valid existing rights, to maintain, protect, and conserve critical habitat for listed threatened and endangered plant species in the San Bernardino National Forest, California. This PLO also includes 280 acres of non-Federal lands within the boundaries of the San Bernardino National Forest that, if acquired, would be subject to this withdrawal.

DATES: This PLO takes effect on October 20, 2023.

FOR FURTHER INFORMATION CONTACT:

Heather Daniels, Bureau of Land Management (BLM) California State Office, telephone: 916–978–4674, email: hdaniels@blm.gov; or Zareen Ali, Forest Service Regional Office, telephone: 707–562–8964 during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The United States Forest Service will manage the lands to maintain, protect, and conserve critical habitat for listed threatened and endangered plant species in the San Bernardino National Forest, California.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws or disposal under the Mineral Materials Act of 1947, to maintain, protect, and conserve critical habitat for listed threatened and endangered plant species in the San Bernardino National Forest, California.

National Forest System Lands

San Bernardino National Forest

San Bernardino Meridian, California

T. 3 N., R. 1 E.,
Sec. 13, SE $\frac{1}{4}$;
Sec. 14, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 19, lot 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 23,
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 24, NE $\frac{1}{4}$ and
NW $\frac{1}{4}$; Sec. 30, lots 1 and 2, NE $\frac{1}{4}$, and
E $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 3 N., R. 2 E.,

A parcel of land within Protracted Blocks 39, 40, 45, and 46 of Township 3 North, Range 2 East, San Bernardino Meridian, San Bernardino County, California adjoining the southeast quarter of section 13 and the northeast quarter of section 24 in Township 3 North, Range 1 East, San Bernardino

Meridian, and being more particularly described as follows:

Beginning at the east quarter section corner of said section 13;

Thence along the easterly line of said section, South 1°30'20" East, 2935.53 feet to the easterly section corner of said sections 13 and 24;

Thence along the easterly line of said section 24, South 1°27'50" East, 2594.76 feet, to the east quarter section corner of said section 24;

Thence along the following 5 courses in the unsurveyed portion of Township 3 North, Range 2 East, San Bernardino Meridian:

1. North 90°00'00" East, 2441.85 feet;
2. North 1°27'50" West, 2594.76 feet;
3. North 90°00'00" East, 2308.15 feet;
4. North 1°30'20" West, 2935.53 feet;
5. South 90°00'00" West, 4750.00 feet to the Point Of Beginning;

Excepting therefrom any portion within Mineral Survey 5679A as patented August 8th, 1924 to Voorhies, et al (Patent Number 942560); Containing 430 acres, more or less.

T. 2 N., R. 3 E.,

Sec. 17, N $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 3 N., R. 1 W.,

Sec. 10, SE $\frac{1}{4}$;

Sec. 14, W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 15, NE $\frac{1}{4}$;

Sec. 22, SE $\frac{1}{4}$;

Sec. 23, W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,

S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$,

S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,

S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,

S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 27, lot 1, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and
SW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described aggregates 2,841.

The following described non-Federal lands are within the boundaries of the San Bernardino National Forest. If title to these non-Federal lands are subsequently acquired by the United States, the lands will become subject to the terms and conditions of the withdrawal.

Non-Federal Lands

San Bernardino Meridian, California

T. 3 N., R. 1 E.,

Sec. 13, SW $\frac{1}{4}$;

Sec. 14, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$.

The area described aggregates 280 acres in San Bernardino County.

2. The withdrawal made by this order does not alter the applicability of those laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this Order, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of

1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714)

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–23258 Filed 10–19–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03040000, 23XR0680A1,
RX187860005004001]

Colorado River Reservoir Operations: Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior (Department) has issued a Scoping Summary Report on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead. The Scoping Summary Report provides a summary of the comments received during the public scoping process and describes the Department's current, preliminary assessment of the proposed federal action, purpose and need, and scope of the environmental analysis to be included in the draft environmental impact statement (DEIS). The Department anticipates the DEIS will be published in December 2024 for public review.

ADDRESSES: The Scoping Summary Report is available on the Bureau of Reclamation's website at <https://www.usbr.gov/ColoradoRiverBasin/post2026/scoping/index.html>. Printed copies of the report are available upon request from the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Amanda Erath, Colorado River Post-2026 Program Coordinator, Bureau of Reclamation, at (303) 445–2766, or by email at crbpost2026@usbr.gov. Please also visit the project website at <https://www.usbr.gov/ColoradoRiverBasin/post2026/index.html>. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered

within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Department is publishing the Scoping Summary Report as a voluntary effort to assist in public understanding of this important NEPA process. Based on the information summarized in the report, the Department is preparing a DEIS starting with the development of a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed federal action (40 CFR part 1508). Considering public input received to date, the Department's current, preliminary assessment of the proposed federal action, purpose and need, and scope of the environmental analysis to be included in the DEIS are described below and in the Scoping Summary Report.

Proposed Federal Action

The Bureau of Reclamation, acting on behalf of the Secretary of the Interior (Secretary), proposes to take action to adopt specific guidelines and coordinated reservoir management strategies to address operations of Lake Powell and Lake Mead through their full operating range. This action would provide improved predictability to all water users and managers in the Colorado River Basin by developing and adopting objective guidelines for the operation of Glen Canyon Dam and Hoover Dam to take effect when the current operating guidelines (the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead [2007 Interim Guidelines]) expire in 2026. In addition, this action is designed to provide for the sustainable management of the Colorado River system and its resources under a wide range of potential future system conditions due to a changing climate.

Based on public input, the Department anticipates the guidelines would include the following elements:

(1) Identification of circumstances under which the Secretary would allocate, reduce, or increase the annual amount of water available for consumptive use from Lake Mead to the Lower Division states (Arizona, California, and Nevada) at, below, or above 7.5 million acre-feet, pursuant to

the Supreme Court Decree in *Arizona v. California*.¹

(2) Coordinated operations of Lake Powell and Lake Mead, particularly under low reservoir conditions.

(3) Storage and delivery of conserved water in Lake Mead and/or Lake Powell to increase the flexibility to meet water use needs from both reservoirs, including the storage and delivery of non-system water; exchanges; and water conserved through extraordinary measures by or for tribal, agricultural, or municipal entities.

The proposed federal action allows for development of robust operating guidelines for Lake Powell and Lake Mead without precluding upstream or downstream actions needed to protect critical reservoir elevations at Lake Powell and Lake Mead, such as the following:

- Approaches that consider total system storage in all major Colorado River reservoirs and/or actual inflows to determine coordinated operations of Lake Powell and Lake Mead.

- Approaches that include opportunities for conservation, augmentation, demand management, or other water management strategies.

- Approaches that include opportunities for conservation, augmentation, demand management, or other water management strategies.
- Temporary emergency response operations at upstream Colorado River reservoirs to protect critical infrastructure at Glen Canyon Dam, so long as the project-specific operations of those reservoirs remain within their respective Records of Decision.

The Department intends that the guidelines be interim in nature and extend for at least the same duration as the 2007 Interim Guidelines (approximately 20 years), subject to further consideration during the NEPA process. Adoption of new guidelines for an interim (or limited) period provides the opportunity to gain additional experience for operating the reservoirs, thereby informing future operational and water management decisions.

Recognizing additional authorities may be developed, it is the intent of the Department to adopt and implement the guidelines in a manner consistent with the Law of the River.² It is also the

¹ The Department intends to meet any consultation requirements identified in Article II(B)(3) of the Supreme Court Decree in *Arizona v. California* through the ongoing NEPA process initiated by the **Federal Register** Notice of June 16, 2023 (88 FR 39455–39458) and the annual implementation of guidelines developed through this process.

² The treaties, compacts, decrees, statutes, regulations, contracts, and other legal documents

intent of the Department that the guidelines be used to implement the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (LROC).

Purpose and Need for the Proposed Federal Action

In accordance with NEPA implementing regulations, a statement of purpose and need is required in an EIS to explain why the agency is proposing the action. The “need” for the action may be described as the underlying problem or opportunity to which the agency is responding with the action; the “purpose” may refer to the goal or objective that the agency is trying to achieve (43 CFR 46.420).

The proposed federal action is needed for the following reasons:

- *The Secretary is legally required to coordinate operations of Colorado River reservoirs:* The Colorado River Basin Project Act of 1968 directs the Secretary to propose criteria for the coordinated long-range operation of Colorado River reservoirs. In compliance with this obligation, the LROC were developed and adopted by the Secretary in 1970. The LROC provide general narrative guidance regarding Lake Powell and Lake Mead operations but does not contain specific, objective criteria to guide annual operations. To address this inadequacy, the 2007 Interim Guidelines were developed to provide objective criteria used by the Department to implement the LROC. These guidelines have provided predictability needed by the entities that receive Colorado River water to better plan for and manage available water supplies from the Colorado River and other sources.

- *2007 Interim Guidelines are expiring:* Current operational guidelines expire during the 2026 operating year. The Department has determined that specific, objective operational guidelines are important to provide improved predictability and should be established for another interim period beyond 2026.

- *2007 Interim Guidelines have not sufficiently reduced risk:* Based on operational experience since 2007, the current guidelines are not robust enough

to manage in a way that is sufficiently protective of the resources dependent on the Colorado River. Despite near-continuous drought-response actions in recent years, low-reservoir conditions have persisted and new infrastructure risks at Glen Canyon Dam have arisen. More robust and adaptive guidelines are needed for the efficient and sustainable management of the major mainstream Colorado River reservoirs and system resources.

- *Imbalance between water supply and demand will be exacerbated by increasingly likely low-runoff conditions:* Climate science indicates the Colorado River Basin is experiencing climate-change induced aridification and that long-term and sustained drought and low-runoff conditions should be expected in the future. These conditions will exacerbate the now widely recognized imbalance between water supply and demand in the Colorado River Basin. Robust and flexible guidelines are needed to manage the Colorado River system and its resources under a broad range of potential future hydrologic conditions.

- *Expanded and innovative use of conservation is needed:* Recognizing the anticipated future low-runoff conditions in the Colorado River Basin, the Department has also determined a need for guidelines that provide Colorado River water users, including Basin Tribes, expanded opportunities to conserve, store, and take subsequent delivery of water in and from Lake Mead and/or Lake Powell. The guidelines should also support and integrate future efficiency improvements and opportunities for augmentation.

- *Addressing tribal concerns regarding Colorado River Basin management is needed:* Basin Tribes have expressed concern that the current approach to Colorado River water management is insufficient to address the range of interests, needs, and fundamental rights of the Basin Tribes. The Department has determined a need for guidelines that provide flexibility and predictability for Basin Tribes to remain able to benefit from their water rights and have an opportunity to participate in voluntary conservation programs.

The purpose for the proposed federal action is to:

- update and expand management guidelines for Colorado River reservoirs, particularly for Lake Powell and Lake Mead;
- provide Colorado River water users, a greater degree of predictability with respect to the amount of annual water available in future years under

anticipated increasing variability, low runoff and low reservoir conditions;

- provide additional mechanisms for the conservation, storage and delivery of water supplies in Colorado River reservoirs;
- provide new or enhanced opportunities for Basin Tribes to benefit from their water rights; and
- provide flexibility to build resilience and accommodate future needs and growth that are supported by Colorado River water supplies, including the integration of unquantified tribal water rights once they are resolved.

DEIS Approach

The DEIS will consider the best scientific information currently available; actual operating experience since 2007; updated information on infrastructure considerations at Glen Canyon Dam and Hoover Dam; trade-offs between the frequency and magnitude of reductions in water deliveries; mechanisms to encourage water conservation, efficiency improvements, and augmentation; and the effect of water storage in Lake Powell and Lake Mead on water supply, power production, recreation, environmental resources, cultural resources, and other relevant resources and factors.

The geographic scope of the environmental analysis in the DEIS is dependent upon the range of alternatives developed in the DEIS and therefore will be determined later in the NEPA process.

Next Steps

With this Notice, the Department is transitioning to the next phase of the NEPA process, which is to develop alternatives for analysis in the DEIS. Reclamation has developed state-of-the-art web-based tools to encourage and facilitate stakeholder collaboration during this phase and intends to deploy these tools in the early stages of this phase in the fall. It is the Department's intent that these tools support the exploration and development of a broad range of reasonable alternatives and foster collaborative consensus-based approaches to alternative development.

Maria Camille Touton,

Commissioner, Bureau of Reclamation.

[FR Doc. 2023-23127 Filed 10-19-23; 8:45 am]

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and agreements applicable to the allocation, appropriation, development, exportation, and management of the waters of the Colorado River Basin are often referred to as the “Law of the River.” There is no single, universally-agreed upon definition of the “Law of the River,” but it is useful as a shorthand reference to describe this longstanding and complex body of legal agreements governing the Colorado River.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1318]

Certain Graphics Systems, Components Thereof, and Digital Televisions Containing the Same; Notice of 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 on July 7, 2023, the presiding administrative law judge (“ALJ”) issued a combined final initial determination (“ID”) finding a violation of section 337 and recommended determination (“RD”) on remedy and bonding in the above-captioned investigation. The Commission has determined to review the final ID in part. 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: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. 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, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 7, 2022, based on a complaint filed by Advanced Micro Devices, Inc. of Santa Clara, California and ATI Technologies ULC of Ontario, Canada (together, “AMD”). 87 FR 34718–19 (June 7, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on certain graphics

systems, components thereof, and digital televisions containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,742,053 (“the ‘053 patent”); 8,760,454 (“the ‘454 patent”); 11,184,628 (“the ‘628 patent”); 8,468,547 (“the ‘547 patent”); and 8,854,381 (“the ‘381 patent”). *Id.* at 34718. The complaint further alleges that a domestic industry (“DI”) exists. *Id.* The notice of investigation (“NOI”) named 14 respondents: (1) TCL Industries Holdings Co., Ltd. of Guangdong, China; (2) TCL Industries Holdings (H.K.) Co. Limited of Hong Kong, China; (3) TCL Electronics Holdings Ltd. f/k/a TCL Multimedia Technology Holdings, Ltd. of Hong Kong, China; (4) TCL Technology Group Corporation of Guangdong, China; (5) TTE Corporation of Hong Kong, China; (6) TCL Holdings (BVI) Ltd. of Hong Kong, China; (7) TCL King Electrical Appliances (Huizhou) Co. Ltd. of Guangdong, China; (8) Shenzhen TCL New Technology Co., Ltd. of Guangdong, China; (9) TCL MOKA International Ltd. of Hong Kong, China; (10) TCL Smart Device (Vietnam) Co., Ltd. of Binh Duong Province, Vietnam; (11) Manufacturas Avanzadas SA de CV of Chihuahua, Mexico; (12) TCL Electronics Mexico, S de RL de CV of Benito Juarez, Mexico; (13) TCL Overseas Marketing Ltd. of Hong Kong, China (collectively, “TCL”); and (14) RealTek Semiconductor Corporation of Hsinchu, Taiwan (“Realtek”). *Id.* at 34719, as amended, 87 FR 62452–53 (Oct. 14, 2022). The Office of Unfair Import Investigations is not named as a party to this investigation. 87 FR at 34719.

On August 4, 2022, the Commission terminated the investigation as to the ‘454 patent. *See* Order No. 10 (July 14, 2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022).

On September 26, 2022, the Commission allowed non-party TTE Technology, Inc. of Corona, California to intervene in this investigation as an additional respondent (collectively, with all others, “Respondents”). *See* Order No. 17 (Aug. 30, 2022), *unreviewed by* Comm’n Notice (Sept. 26, 2022).

On October 7, 2022, the Commission terminated the investigation as to claims 17–21 of the ‘547 patent and amended the complaint and NOI to correct the names of two respondents by changing “TCL Industries Holdings (H.K.) Limited” to “TCL Industries Holdings (H.K.) Co. Limited,” and “Shenzhen TCL New Technologies Co., Ltd.” to “Shenzhen TCL New Technology Co., Ltd.”. *See* Order Nos. 23 (Sept. 20, 2022)

and 24 (Sept. 20, 2022), *unreviewed by* 87 FR 62452–53 (Oct. 14, 2022).

On February 22, 2023, the Commission terminated the investigation as to the ‘547 patent. *See* Order No. 56 (Jan. 24, 2023), *unreviewed by* Comm’n Notice (Feb. 22, 2023). On March 7, 2023, the Commission terminated the investigation as to claims 1–4 and 7 of the ‘053 patent and claims 8, 11, and 12 of the ‘628 patent. *See* Order No. 64 (Feb. 7, 2023), *unreviewed by* Comm’n Notice (Mar. 7, 2023).

On March 15, 2023, the Commission granted summary determination that the economic prong of the DI requirement has been satisfied in this investigation as to the remaining asserted patents—*i.e.*, the ‘053, ‘628, and ‘381 patents. *See* Order No. 62 (Feb. 6, 2023), *aff’d by* Comm’n Notice (Mar. 15, 2023).

On March 30, 2023, the Commission terminated the investigation as to claim 8 of the ‘053 patent and claim 18 of the ‘381 patent. *See* Order No. 70 (Mar. 14, 2023), *unreviewed by* Comm’n Notice (Mar. 30, 2023). On April 19, 2023, the Commission terminated the investigation as to the ‘628 patent. *See* Order No. 72 (Apr. 3, 2023), *unreviewed by* Comm’n Notice (Apr. 19, 2023).

On July 7, 2023, the ALJ issued the subject final ID on violation and RD on remedy and bonding. The ID finds no violation of section 337 as to the ‘053 patent, but does find a violation as to claims 19 and 20 of the ‘381 patent. The RD recommends that, should the Commission determine that a violation of section 337 has occurred, the Commission should: (i) issue a limited exclusion order against the Respondents’ infringing products; (ii) issue a cease and desist order against all the Respondents, except for Realtek and TTE; and (iii) issue no bond for importations of infringing products during the period of Presidential review.

On July 21, 2023, AMD filed a contingent petition seeking review of certain findings in the ID, including non-infringement of the asserted claims of the ‘053 patent and claim construction and invalidity as to claims 15–17 of the ‘381 patent. That same day, Respondents filed a petition seeking review of certain of the ID’s findings concerning claim construction, infringement, validity, and the technical prong of the DI requirement as to claims 19 and 20 of the ‘381 patent. Respondents also contingently petition for review of certain findings on claim construction, infringement, validity, and the technical prong of the DI requirement as to the asserted claims of the ‘053 patent and claims 15–17 of the ‘381 patent. On July 31, 2023, AMD and

Respondents each filed a response opposing the other's petition.

The Commission did not receive submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's **Federal Register** notice. See 88 FR 48262–63 (July 26, 2023).

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, the petitions, and the responses thereto, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's findings regarding the construction of limitation 5[c] ("a plurality of command processing engines, coupled to the arbiter, each operable to receive and process the command thread"), as well as infringement and satisfaction of the technical prong of the DI requirement with respect to limitation 5[c] of claim 5 of the '053 patent. On review, the Commission has determined to take no position on those issues. The Commission has also determined to review the ID's finding regarding infringement of claim 19 of the '381 patent. The Commission has determined not to review the remaining findings in the ID.

In connection with its review, the Commission requests responses to the following question. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) Whether the accused products practice the limitation "based on respective state data associated with each of the first [graphics-processing task] and second [general-compute] tasks" as required by claim 19 of the '381 patent under the ID's construction of "based on respective state data." Provide citations to record evidence in support of your position.

The parties are invited to brief only the discrete issue 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 cease and desist orders 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 issue identified in this notice. 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 its initial written submission, AMD is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. AMD 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 October 30, 2023. Reply submissions must be filed no later than the close of business on November 6, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 40 pages. Reply submissions are limited to 25 pages. No further submissions on any of 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 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1318) 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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of 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 October 16, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 16, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23150 Filed 10–19–23; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–106]

Information Collection: NASA Earth Observing System Data and Information System 2023 Customer Satisfaction Questionnaire

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 November 20, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The ESODIS customer satisfaction survey is performed each year (2023 is the 20th collection) under the auspices of NASA HQ as one of their metrics reported to OMB as a part of the Reduction of Paperwork Act. In this survey, the public users of the EOSDIS system (through the 12 Distributed Active Archive Centers—DAACs) are encouraged to answer specific questions that aid NASA discern the overall user satisfaction of its Earth data system. NASA through DOI/FCG contracts the management of this survey to a private survey entity (CFI) so that the respondents are assured the survey and its results are collected in a unbiased manner. The survey has two portions, a general section of questions to understand aspects of the data system the user has engaged with, and a second section that is created by each of the 12 DAACs so that these centers can address specific types of questions for that science domain community.

II. Methods of Collection

The collection of data from our respondents to wholly performed using an on-line, internet-based system that is developed and hosted by CFI.

III. Data

Title: The Annual EOSDIS Customer Satisfaction (ACSI) User Survey.

OMB Number: 2700–xxxx.

Type of review: New.

Affected Public: Individuals.

Estimated Annual Number of Activities: 10,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 10,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,500.

Estimated Total Annual Cost: \$118,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and

clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–23241 Filed 10–19–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) NSB–NSF Commission on Merit Review hereby gives notice of the scheduling of a videoconference meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, October 25, 2023, from 12 p.m.–1 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the meeting is: Commission Chair's opening remarks; Discussion of the evaluation of Merit Review criteria; Commission Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: (Chris Blair, cblair@nsf.gov), 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. The YouTube link will be available from the NSB web page.

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–23310 Filed 10–18–23; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 23, 30, November 6, 13, 20, 27, 2023. 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>.

PLACE: 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.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at Betty.Thweatt@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of October 23, 2023

There are no meetings scheduled for the week of October 23, 2023.

Week of October 30, 2023—Tentative

Thursday, November 2, 2023

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Jennie Rankin: 301-415-1530)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of November 6, 2023—Tentative

There are no meetings scheduled for the week of November 6, 2023.

Week of November 13, 2023—Tentative

Thursday, November 16, 2023

9:00 a.m. Briefing on Region I Activities and External Engagement (Public Meeting) (Contact: Wesley Held: 301-287-3591)

Additional Information: The meeting will be held at the Market and Broad Conference Room, 475 Allendale Rd., Suite 102, King of Prussia, Pennsylvania. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of November 20, 2023—Tentative

There are no meetings scheduled for the week of November 20, 2023.

Week of November 27, 2023—Tentative

There are no meetings scheduled for the week of November 27, 2023.

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 NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: October 18, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023-23333 Filed 10-18-23; 11:15 am]

BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of an information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget extend approval under the Paperwork Reduction Act of a collection of information under PBGC's regulation on Missing Participants. PBGC needs the information submitted by plans under this collection to search for missing participants and beneficiaries and pay their benefits. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be received on or before November 20, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. All comments received will be posted without change to PBGC's website, <http://www.pbgc.gov>, including any personal information provided. Do not submit comments that

include any personally identifiable information or confidential business information.

A copy of the request will be posted on PBGC's website at <https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment>. It may also be obtained without charge by writing to the Disclosure Division (disclosure@pbgc.gov), Office of the General Counsel of PBGC, 445 12th Street SW, Washington, DC 20024-2101; or, calling 202-229-4040 during normal business hours. If you are deaf or hard of hearing or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT:

Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101; 202-229-6352; cibinic.stephanie@pbgc.gov. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The process of closing out a terminated pension plan or other retirement plan involves the disposition of plan assets to satisfy the benefits of plan participants and beneficiaries. One difficulty faced by plan administrators in closing out terminated plans is how to provide for the benefits of missing persons. Section 4050 of ERISA and 29 CFR part 4050 establishes a program under which the Pension Benefit Guaranty Corporation (PBGC) holds the retirement benefits for missing participants and beneficiaries in terminated plans and seeks to reunite those participants and beneficiaries with the benefits being held for them. The program is applicable to certain defined benefit (DB) pension plans covered by PBGC's single-employer or multiemployer insurance programs, and to defined contribution (DC) plans and small professional service DB plans not covered by PBGC's insurance programs.

The Missing Participant Program (MPP) for each of the four types of plans follows the same basic design. The most prominent difference among them lies in the mandatory or voluntary nature of the program. For plans covered by the title IV insurance programs, participation in the MPP is mandatory. For plans not covered by the title IV insurance programs, PBGC's regulation permits, but does not require, such plans to participate in the MPP.

PBGC needs information from plans that participate in the MPP, to identify the plans and their missing participants

and beneficiaries, to search for missing participants and beneficiaries, to determine the persons entitled to benefits that the plans transfer to PBGC and the forms and amounts of benefits payable, and to refer claimants of benefits being held elsewhere to the institutions holding the benefits.

PBGC intends to make the following modifications to the information collection in this renewal:

- PBGC is proposing a requirement for plans that are filing information about more than five missing individuals (participants or beneficiaries) to provide that information in a spreadsheet file. PBGC provides a user-friendly template that may be used for this purpose.
- PBGC is adding a question to the DB plan forms (MP-100, 300, and 400) asking if the plan has a default beneficiary provision, and, if yes, requiring an attachment of it. (This question is already on the DC plan form (MP-200)).
- PBGC is updating references on the DB plan forms and instructions that relate to de minimis benefit amounts of \$5,000 or less to reflect the change under section 304 of the SECURE 2.0 Act increasing that amount to \$7,000 as of January 1, 2024.¹
- PBGC is adding a box to the DC plan form for the person certifying the form to check whether they are the plan's plan administrator or the plan's qualified termination administrator.

Finally, PBGC intends to make other clarifying and editorial changes to the forms and instructions, including listing common filing errors.

PBGC estimates that it will receive over the next 3 years an annual average of 345 filings from plans under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 70 hours and \$498,000. The actual hour burden and cost burden per plan will vary depending on plan size and other factors.

The existing collection of information was approved under OMB control number 1212-0069 (expires January 31, 2024). On July 3, 2023, PBGC published in the **Federal Register** a notice at 88 FR 42758 informing the public of its intent to request an extension of this collection of information and solicited public comment. No comments were received. PBGC intends to request that OMB extend its approval of this collection of information for three years. 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.

Issued in Washington, DC.

Stephanie Cibinic,
Deputy Assistant General Counsel for
Regulatory Affairs, Pension Benefit Guaranty
Corporation.

[FR Doc. 2023-23248 Filed 10-19-23; 8:45 am]

BILLING CODE 7709-02-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98761; File No. SR-
CboeBZX-2023-081]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 16, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2023, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule.³

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 19% of the market share and currently the Exchange represents only approximately 4% of the market share.⁴ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard transaction fee of \$0.48 per contract for Customer orders in Penny Securities, excluding SPY and IWM, that remove liquidity, yielding fee code "PC". The Exchange assesses a standard transaction fee of \$0.45 per contract for Customer SPY and IWM orders that remove liquidity, yielding fee code "PR". The Fee Codes and Associated Fees section of the Fees

³ The Exchange initially filed the proposed fee changes on September 29, 2023 (SR-CBOE-2023-076) [sic]. On October 4, 2023, the Exchange withdrew that filing and submitted this proposal.

⁴ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (September 25, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

¹ SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328 (Dec. 29, 2022).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Schedule also provides for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. In response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

The Exchange proposes to amend the standard transaction fee applicable to fee code PC from \$0.48 per contract to \$0.45 per contract (same as current fee code PR), and to amend the definition of fee code PC so that such fee code (and corresponding transaction fee) applies to all Customer orders in Penny Securities that remove liquidity (including SPY and IWM). The Exchange also proposes to eliminate fee code "PR". Additionally, the Exchange proposes to delete the Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers, set forth in Footnote 14 of the Fee Schedule and applicable to orders yielding fee code PD.⁵

Currently, the Exchange provides a rebate of \$0.85 per contract for Customer orders in Non-Penny Securities that add liquidity, yielding fee code "NY". The Exchange now proposes to increase the rebate provided for Customer orders in Non-Penny Securities that add liquidity and yield fee code NY, to \$1.05. The Exchange also proposes to delete the Customer Non-Penny Add Volume Tiers, set forth in Footnote 12 to the Fee Schedule and applicable to orders yielding fee code NY, since under the proposed rule change the Exchange is now providing a rebate for orders yielding fee code NY equal to the highest tier of the program.⁶

The Exchange currently assesses a standard transaction fee of \$1.10 for Non-Customer orders in Non-Penny Securities that remove liquidity, yielding fee code "NP". The Exchange proposes to increase the standard transaction fee for Non-Customer orders in Non-Penny Securities that remove

liquidity and yield fee code NP, to \$1.15. The Exchange also proposes to eliminate the Non-Customer Non-Penny Take Volume Tiers program set forth in Footnote 13 to the Fee Schedule, applicable to orders yielding fee code NP.⁷

Finally, the Exchange currently offers five Market Maker Penny Add Volume Tiers under Footnote 6 of the Fee Schedule, including on Market Maker Cross-Asset Add Tier, which provide additional rebates between \$0.31 and \$0.43 per contract for qualifying Market Maker orders (*i.e.*, that yield fee code PM)⁸ where a Member meets certain liquidity thresholds. For example, current Tier 2 offers an enhanced rebate of \$0.38 per contract for qualifying orders where a Member has an ADAV⁹ in Market Maker orders greater than or equal to 0.25% of average OCV;¹⁰ Tier 3 offers an enhanced rebate of \$0.39 per contract for qualifying orders where a Member has an ADAV in Market Maker orders greater than or equal to 0.40% of average OCV; and Tier 4 offers an enhanced rebate of \$0.43 per contract for qualifying orders where a Member has an ADAV in Market Maker orders greater than or equal to 0.60% of average OCV. The Exchange now proposes to amend the Market Maker Penny Add Volume Tiers by updating the criteria for Tiers 2, 3, and 4.

Specifically, the proposed rule change amends the criteria in Tier 2 so that a Member must have an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; amends the criteria in Tier 3 so that a Member must have an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; and amends the criteria in Tier 4 so that a Member must have an ADAV in Market Maker orders greater than or equal to 0.65% of average OCV. The proposed rule change does not alter the enhanced rebates offered under each tier.

The proposed changes to the criteria in Tiers 2, 3, and 4 are designed to continue to provide an incremental incentive for Members to strive for the

highest tier levels, which provide increasingly higher rebates for such transactions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, competing exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon similarly situated members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

⁵ Orders yielding fee code PD are Firm, Broker Dealer and Joint Back Office orders that remove liquidity in Penny Program Securities and are charged a standard transaction fee of \$0.48. The Exchange proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

⁶ The Exchange proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

⁷ The Exchange proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

⁸ Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Program Securities and are offered a rebate of \$0.29.

⁹ "ADAV" means average daily added volume calculated as the number of contracts added, per day.

¹⁰ "OCC Customer Volume" or "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(4).

In particular, the Exchange believes that proposed changes to fee code PC to reduce the standard transaction fee and make the fee code applicable to all customer orders in Penny Securities that remove liquidity (including SPY and IWM), is reasonable, equitable and not unfairly discriminatory. The current fee code PC already applies to customer orders in Penny Securities that remove liquidity, except for SPY and IWM (which yield fee code PR), and will apply in the same manner to liquidity removing IWM and SPY Customer orders. As amended, fee code PC assesses the same rate, \$0.45, as fee code PR, which is eliminated under the proposed rule change. Thus, the Exchange believes the proposed change is reasonable as Members will continue to pay the same fee for liquidity removing IWM and SPY Customer orders. Further, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory as fee code PC applies automatically and uniformly to all Customer orders in Penny Securities that remove liquidity.

The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for Customer orders in Penny Securities that add liquidity, as compared to other market participants, because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.¹⁵

The Exchange believes the proposed rule change to increase the rebate provided for Customer orders that add liquidity in Non-Penny Securities is reasonably designed to further incentivize Members to submit Customer orders that add liquidity in Non-Penny Securities, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the

benefit of all market participants. Further, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory as all Members that submit Customer orders that add liquidity in Non-Penny Securities and yield fee code NY will receive the rebate.

The Exchange believes eliminating the Customer Non-Penny Add Volume Tiers under Footnote 12 is reasonable because the Exchange is not required to maintain this program. While the Exchange is not required to provide Members an opportunity to receive reduced fees or enhanced rebates, Members may still have other opportunities to obtain enhanced rebates for orders in Non-Penny Securities, such as via the Non-Penny Add Volume Tiers (via Footnotes 7, 8, and 11 of the Fee Schedule). Further, the Exchange believes the Customer Non-Penny Add Volume Tiers may no longer incentivize Members, as the rebate offered under amended fee code NY is equal to the highest rebate available under the Customer Non-Penny Add Volume Tiers. The Exchange believes that eliminating the Customer Non-Penny Add Volume Tiers is equitable and not unfairly discriminatory because it applies uniformly to all Members. Further, the Exchange notes that the proposed changes will not adversely impact any Member's ability to otherwise qualify for reduced fees or enhanced rebates offered under other programs in the Fee Schedule.

The Exchange believes the proposed rule change to increase the standard fee for Non-Customer orders that remove liquidity in Non-Penny Securities is reasonable because it is a modest increase in this transaction rate for these orders. Additionally, the increased fee is in line with fees assessed for similar transactions at other exchanges.¹⁶ The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to all Members.

The Exchange believes eliminating the Non-Customer Non-Penny Take Volume Tiers under Footnote 13 and Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers under Footnote 14 is reasonable because the Exchange is not required to maintain

these programs or provide Members an opportunity to receive reduced fees or enhanced rebates. The Exchange believes that eliminating the Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers and Non-Customer Non-Penny Take Volume Tiers is equitable and not unfairly discriminatory because it applies uniformly to all Members, in that, such programs will not be available for any Member. Further, the Exchange notes that the proposed changes will not adversely impact any Member's ability to otherwise qualify for reduced fees or enhanced rebates offered under other programs in the Fee Schedule.

Finally, the Exchange believes updating the criteria for Tiers 2, 3, and 4 of the Market Maker Penny Add Volume Tiers is reasonable as it is designed to encourage Market Makers to increase their order flow to the Exchange to achieve each tiers' criteria, as amended. More specifically, the Exchange believes that updating the criteria for Tiers 2, 3, and 4 may encourage Members to increase their ADAV in Market Makers orders, over a modestly higher percentage of average OCV, and encourage Members to strive to achieve higher tiers (and corresponding higher rebates) by submitting the requisite add volume order flow. An increase in Market Maker add volume, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors by continuing to deepen the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the proposed criteria in Tiers 2, 3, and 4 continues to reasonably reflect the incremental difficulty in achieving the Market Maker Penny Add Volume Tiers.

The Exchange believes the proposed change is also equitable and not unfairly discriminatory because it applies uniformly to all Members, who will have the opportunity to meet the tiers' new criteria and receive the corresponding rebate for the tier if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed

¹⁵ See BZX Options Fee Schedule, Fee Codes and Associated Fees. See also Cboe C2 Options Exchange Fees Schedule, Transaction Fees.

¹⁶ See, e.g., NYSE Arca Fee Schedule, Transaction Fee for Electronic Executions—Per Contract, which provides that Firms and Broker Dealers that remove liquidity are assessed \$1.10 per contract in Non-Penny Issues. See also MIAX Pearl Options Exchange Fee Schedule, which provides Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers that remove liquidity are assessed between \$1.09 and \$1.10 per contract for Non-Penny classes, depending on volume.

rule change would definitively result in any changes to particular Market Makers qualifying for the proposed tiers, the Exchange believes that that at least two Market Makers will reasonably be able to achieve the proposed criteria in Tier 2, one Market Maker may be able to achieve the proposed criteria in Tier 3, and one Market Maker may be able to achieve the proposed criteria in Tier 4; however, the proposed tiers are open to any Market-Maker that satisfies the tier's criteria. Additionally, all Members are able to increase their Market Maker order flow to attempt to achieve the new tiers' criteria. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed change to apply fee code PC to all Customer orders that remove liquidity in all Penny Securities, including IWM and SPY, will not impose any burden on intramarket competition because it will apply uniformly to all Members. Further, the Exchange believes the proposal to reduce the standard fee for Customer orders that remove liquidity in Penny Securities will not impose any burden on intramarket competition because it will apply uniformly to all Members, in that all Members that submit orders yielding fee codes PC will pay the same transaction fee. As discussed above, the Exchange believes the proposed change to reduce the transaction fee would attract additional Customer orders that remove liquidity, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Securities and Exchange Commission's (the "Commission's") goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

Additionally, the Exchange believes the proposal to increase the rebate offered for Customer orders in Non-Penny Securities that add liquidity and

to increase the standard transaction fee for Non-Customer orders in Non-Penny Securities that remove liquidity will not impose any burden on intramarket competition, as the changes will apply uniformly to all Members. Further, the Exchange believes the proposal to eliminate the Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers, Non-Customer Non-Penny Take Volume Tiers, and Customer Non-Penny Add Volume Tiers will not impose any burden on intramarket competition because they will no longer be available to any Members.

The Exchange believes the proposals to amend the criteria for Tiers 2, 3, and 4 of the Market Maker Penny Add Volume Tiers will also not impose any burden on intramarket competition, as they will also apply to all Members. All Members will continue to have an opportunity to receive rebates under various tiers. Market Maker Volume Add Tiers are generally designed to increase the competitiveness of BZX and incentivize participants to increase their order flow on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. An overall increase in add activity may provide for deeper, more liquid markets and execution opportunities at improved prices.

The Exchange does not believe that the proposed changes represent a significant departure from pricing currently offered by the Exchange or pricing offered by other options exchanges. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange also believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 17 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 19% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose

to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .". Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2023-081. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2023-081 and should be submitted on or before November 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-23141 Filed 10-19-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-563, OMB Control No. 3235-0625]

Submission for OMB Review; Comment Request; Extension: Rule 17g-1 and Form NRSRO

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17g-1, Form NRSRO and Instructions to Form NRSRO under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).¹

Rule 17g-1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for NRSROs. Currently, there are 10 credit rating agencies registered as NRSROs with the Commission. Based on staff experience, the Commission estimates that the revised ongoing annual burden for respondents to comply with Rule 17g-1 and Form NRSRO is 2,750 hours.² In addition, the Commission estimates an industry-wide annual external cost to NRSROs of \$4,000 to comply with the requirements.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or other forms of information technology.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by November 20, 2023 to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F St NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: October 16, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-23136 Filed 10-19-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98765; File No. SR-NYSEARCA-2023-71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the John Hancock Fundamental All Cap Core ETF Under Rule 8.601-E, Active Proxy Portfolio Shares

October 17, 2023.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on October 13, 2023, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

¹⁹ 17 CFR 200.30-3(a)(12).

¹ See 17 CFR 240.17g-1 and 17 CFR 249b.300.

² 10 currently registered NRSROs × 275 hours = 2,750 hours

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 list and trade shares of the following under NYSE Arca Rule 8.601-E: John Hancock Fundamental All Cap Core ETF. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that "[t]he term 'Active Proxy Portfolio Share' means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 ('Investment Company') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value ('NAV'); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter." Rule 8.601-E(c)(2) provides that "[t]he term 'Actual Portfolio' means the identities

Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals under section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares ("Shares") of the John Hancock Fundamental All Cap Core ETF (the "Fund") under Rule 8.601-E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E⁵ and for which a "Disclosed Portfolio" is required to be disseminated at least once daily,⁶ the portfolio for an issue of

and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day." Rule 8.601-E(c)(3) provides that "[t]he term 'Proxy Portfolio' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series." Rule 8.601-E(c)(4) provides that the term "Custom Basket" means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SIM Dynamic Allocation Diversified Income ETF and SIM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁶ NYSE Arca Rule 8.600-E(c)(2) defines the term "Disclosed Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily

Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940, as amended (the "1940 Act").⁷ The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares. As set forth in NYSE Arca Rule 8.601-E(d)(2)(B)(ii), for Active Proxy Portfolio Shares using a Custom Basket, each Business Day,⁸ before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34-E (a)), the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

The Commission has previously approved⁹ and noticed for immediate

and will be made available to all market participants at the same time.

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information ("SAI"), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

⁸ "Business Day" is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by section 22(e) of the 1940 Act.

⁹ See, e.g., Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020)

effectiveness¹⁰ the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares will be issued by the Fund, a series of the John Hancock Exchange-Traded Fund Trust (the

(SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E); 91266 (March 5, 2021), 86 FR 13930 (March 11, 2021) (SR–NYSEArca–2020–104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E).

¹⁰ See, e.g., Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR–NYSEArca–2021–84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Schwab Ariel ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 94486 (March 22, 2022), 87 FR 17351 (March 28, 2022) (SR–NYSEArca–2022–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Columbia Seligman Semiconductor and Technology ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares)); 94908 (May 13, 2022), 87 FR 30524 (May 19, 2022) (SR–NYSEArca–2022–28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Principal Real Estate Active Opportunities ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares)); 94902 (May 12, 2022), 87 FR 30286 (May 18, 2022) (SR–NYSEArca–2022–29) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the IQ Winslow Large Cap Growth ETF and IQ Winslow Focused Large Cap Growth ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)).

“Trust”), which is organized as a business trust under the laws of the Commonwealth of Massachusetts and registered with the Commission as an open-end management investment company.¹¹ John Hancock Investment Management LLC (the “Adviser”) will be the investment adviser to the Fund. Manulife Investment Management (US) LLC will be the sub-adviser (the “Sub-Adviser”) for the Fund. State Street Bank and Trust Company will serve as the Fund’s custodian and transfer agent (the “Custodian”). Foreside Fund Services, LLC will act as the distributor (the “Distributor”) for the Fund.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto.

¹¹ The Trust is registered under the 1940 Act. On August 2, 2023, the Trust filed a registration statement on Form N–1A under the 1940 Act relating to the Fund (File Nos. 333–183173 and 811–22733) (the “Registration Statement”). The Trust filed a second amended and restated application for an order under section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder on December 20, 2021 (File No. 812–15235) (the “Application”). On January 10, 2022, the Commission issued a notice relating to the Application (Investment Company Act Release No. 34468, January 10, 2022), and on February 7, 2022, the Commission issued an order under the 1940 Act granting the relief sought in the Application (Investment Company Act Release No. 34496, February 7, 2022) (the “Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Fund herein is based, in part, on the Registration Statement, Application, and Exemptive Order. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.¹² Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliates, as applicable, applicable to an Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or

¹² An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, but each is affiliated with a broker-dealer. The Adviser and Sub-Adviser have implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a “fire wall” with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser, Sub-Adviser, or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or has access to non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will

maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Description of the Fund

According to the Registration Statement, the Fund will publish a “Tracking Basket”¹³ on its website on each Business Day.¹⁴ The Tracking Basket is designed to closely track the daily performance of the Fund but is not the Fund’s Actual Portfolio. The Tracking Basket is comprised of (1) select recently disclosed portfolio holdings and/or select securities from the universe from which the Fund’s investments are selected (“Strategy Components”); (2) liquid U.S. exchange-traded ETFs that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which the Fund invests (“Representative ETFs”); and (3) cash and cash equivalents. Representative ETFs will be selected for inclusion in the Tracking Basket such that, when aggregated with the other Tracking Basket components, the Tracking Basket corresponds to the Fund’s overall holdings exposure. The Fund will publish the Tracking Basket for the Fund on its website before the commencement of trading of the Fund’s Shares on each Business Day, and the Adviser will not make intra-day changes to the Tracking Basket except to correct errors in the published Tracking Basket.

In addition, on each Business Day, before commencement of trading of Shares, the Fund will publish on its website the “Tracking Basket Weight Overlap,” which is the percentage weight overlap between the holdings of the prior Business Day’s Tracking Basket compared to the holdings of the Fund that formed the basis for the Fund’s calculation of NAV at the end of the prior Business Day. The Tracking Basket Weight Overlap is calculated by taking the lesser weight of each asset held in common between the Fund’s Actual Portfolio and the Tracking Basket and adding the totals. The Tracking Basket Weight Overlap is designed to provide investors with an understanding of the degree to which the Tracking Basket and the Fund’s Actual Portfolio overlap and help investors evaluate the risk that the

performance of the Tracking Basket may deviate from the performance of the Fund’s Actual Portfolio.

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁵ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund will under normal market conditions invest at least 80% of its net assets in equity securities (including exchange-traded common and preferred securities and exchange-traded futures providing such exposure). Market capitalizations of the companies in whose securities the Fund may invest will span the capitalization spectrum. The Fund may invest up to 20% of its net assets in equity securities of foreign issuers, including ADRs, and may invest only in common stocks listed on a foreign exchange that trade contemporaneously with the Fund’s Shares.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601–E. The Fund’s holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹⁶

The Fund’s investments, including derivatives, will be consistent with its investment objectives and will not be used to enhance leverage (although

¹⁵ Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: exchange-traded funds, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (“ADRs”), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares. In addition, the Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

¹⁶ *Id.*

¹³ The “Tracking Basket” is the Proxy Portfolio for purposes of Rule 8.601–E(c)(3).

¹⁴ “Business Day” is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by section 22(e) of the 1940 Act.

certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹⁷

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in specified minimum size "Creation Units" on a continuous basis through the Distributor at the NAV next determined after receipt of an order, on any Business Day, in proper form. The NAV of the Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. Eastern Time ("E.T."). A Creation Unit will generally consist of at least 5,000 Shares.

According to the Registration Statement, Shares of the Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis in exchange for a basket of securities and/or instruments (the "Deposit Securities") together with a deposit of a specified cash payment (the "Cash Component") or, alternatively, a specified all cash payment (the "Cash Deposit"). Together, the Deposit Securities and Cash Component or, alternatively, the Cash Deposit constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. In the event the Fund requires Deposit Securities and a Cash Component in exchange for the purchase of a Creation Unit, the function of the Cash Component is to compensate for any differences between the NAV per Creation Unit and the "Deposit Amount," which is an amount equal to the market value of the Deposit Securities. Deposit Securities may include securities that are not included, or that are included with different weightings, in a fund's Tracking Basket.

Creation Units of the Fund may be purchased and/or redeemed partially or entirely for cash. When full or partial cash purchases or redemptions of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof.

In the event the Fund requires Deposit Securities and a Cash Component in consideration for purchasing a Creation

Unit, the Fund may determine, upon receiving a purchase order from an Authorized Participant (as defined below), to accept a basket of securities or cash that differs from Deposit Securities or to permit the substitution of an amount of cash (i.e., a "cash in lieu" amount) to be added to the Cash Component to replace any Deposit Security. The Fund will generally require the substitution of an amount of cash (i.e., a cash-in-lieu amount) to replace Deposit Securities that are Representative ETFs. Similarly, the Fund will generally substitute a cash-in-lieu amount to replace any Fund Securities that are Representative ETFs in connection with the redemption of Creation Units and may determine to permit a "cash-in-lieu" amount for any reason, and the amount of cash paid out in such cases will be equivalent to the value of the instrument listed as a Fund Security (as defined below).

The identity and number of Deposit Securities comprising a Creation Unit may change from time to time. The Custodian, through the National Securities Clearing Corporation ("NSCC"), will make available on each Business Day, immediately prior to the opening of business on the Exchange (9:30 a.m. E.T.), a list of the names and the required number of each Deposit Security and the amount of the Cash Component that Fund would accept as a Fund Deposit for that day, as well as the identity of a basket of securities ("Fund Securities") and/or an amount of cash applicable to redemption requests received on that day. The published Fund Deposit and Fund Securities will apply until a new Fund Deposit and Fund Securities are announced on the following Business Day, and there will be no intra-day changes to the Fund Deposit or Fund Securities except to correct errors in the published Fund Deposit or Fund Securities and except to the extent permitted under the Exemptive Order. The Fund Deposit and Fund Securities will be published each Business Day regardless of whether the Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant.¹⁸ Conforming orders to purchase or redeem Creation Units will generally be accepted until the closing time of regular trading hours on the

Exchange (ordinarily 4:00 p.m. E.T.) (the "Closing Time"). The date on which an order to purchase or redeem Creation Units is received and accepted is referred to as the "Transmittal Date." All conforming Creation Unit orders must be received by the Distributor no later than the Closing Time in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Fund's website (jhinvestments.com/etf), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include on a daily basis, per Share for the Fund: (1) the prior Business Day's NAV; (2) the prior Business Day's "Closing Price" or "Mid-Point of the Bid/Ask Price;"¹⁹ and (3) a calculation of the premium/discount of such Closing Price or Mid-Point of the Bid/Ask Price against such NAV.²⁰ The Adviser has represented that the Fund's website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The Fund's website also will disclose the information required under Rule 8.601-E(c)(3).²¹ The website and information will be publicly available at no charge.

The identity and quantity of investments in the Tracking Basket will be publicly available on the Fund's website before the commencement of

¹⁹ The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The "Bid/Ask Price" is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The "National Best Bid and Offer" is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The "Closing Price" of Shares is the official closing price of the Shares on the Exchange.

²⁰ The "premium/discount" refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price on a given trading day.

²¹ See note 4, *supra*. Rule 8.601-E(c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable: (i) ticker symbol; (ii) CUSIP or other identifier; (iii) description of holding; (iv) quantity of each security or other asset held; and (v) percentage weighting of the holding in the portfolio.

¹⁷ The Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund's first full calendar year of performance.

¹⁸ An Authorized Participant is a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase and redemption of creation units.

trading in Shares on each Business Day. The website will also include information relating to the Tracking Basket Weight Overlap, as discussed above. With respect to each Custom Basket utilized by the Fund, each Business Day, before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E(a)), the Fund’s website will also include the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the Tracking Basket only with respect to cash.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund’s Commission filings will be provided on the Fund’s website on a current basis.²² Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, no less than 60 days after the end of every fiscal quarter, and will make such information publicly available to all market participants at the same time.

Investors can also obtain the Fund’s prospectus, SAI, Shareholder Reports, Form N–CSR, Form N–PORT, and Form N–CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N–CSR, Form N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website. The Exchange also notes that pursuant to the Application, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. The previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers or news websites.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (“CTA”) high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from

the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²³ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is

\$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Company that (i) the NAV per Share of the Fund will be calculated daily, (ii) the NAV, Tracking Basket, and the Actual Portfolio for the Fund will be made publicly available to all market participants at the same time, and (iii) the Company and any person acting on behalf of the Company will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (“FINRA”) will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁴ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and

²⁴ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

²² See note 7, *supra*.

²³ See NYSE Arca Rule 7.12–E.

investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁵

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, as necessary to assist with the performance of the surveillances and investigations referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures applicable to Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout

the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,²⁶ in general, and furthers the objectives of section 6(b)(5) of the Act,²⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²⁸

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ The Exchange represents that, for initial and continued listing, the Fund will be in compliance

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁹

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Tracking Basket component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The proposed rule change is designed to promote just and equitable principles

with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

²⁹ See note 15, *supra*.

²⁵ For a list of the current members of ISG, see www.isgportal.org.

of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Tracking Basket, Actual Portfolio, and/or Custom Basket, as applicable, for the Fund will be made available to all market participants at the same time. Investors can obtain the Fund's SAI, shareholder reports, and its Form N-CSR, Form N-PORT, and Form N-CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-CSR, Form N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures applicable to Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request as necessary to facilitate the performance of the surveillances and investigations referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires the issuer of Shares to notify the Exchange of any failure to comply with the continued listing requirements

of Rule 8.601-E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to the Fund's Tracking Basket and quotation and last sale information for the Shares. The identity and quantity of investments in the Fund's Tracking Basket will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601-E.³⁰

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be

consistent with all requirements in the Application and Exemptive Order.³¹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of an additional actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

³⁰ See note 4, *supra*.

³¹ See note 15, *supra*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act³² and Rule 19b-4(f)(6) thereunder.³³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Commission has approved and noticed for immediate effectiveness proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Fund.³⁵ The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2023-71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-71 and should be

submitted on or before November 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-23265 Filed 10-19-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

SBA Invention, Innovation, and Entrepreneurship Advisory Committee Meeting

AGENCY: Small Business Administration.

ACTION: Notice of Federal Advisory committee meeting; SBA Invention, Innovation, and Entrepreneurship Advisory Committee.

SUMMARY: The U.S. Small Business Administration (SBA) will hold the inaugural meeting of the SBA Invention, Innovation, and Entrepreneurship Advisory Committee on Wednesday, November 1, 2023. Members will convene as an independent source of advice and recommendations to SBA on matters supporting U.S. innovation, addressing commercialization hurdles and other vulnerabilities in the domestic investment and innovation ecosystem, and facilitating entrepreneurial access-to and participation-in federal innovation support and funding programs. The meeting will be in person for members and streamed live to the public.

DATES: Wednesday November 15, 2023, from 9 a.m. to 3 p.m. Eastern Time (ET).

ADDRESSES: The Invention, Innovation, and Entrepreneurship Advisory Committee will meet at the SBA Headquarters Building located at 409 3rd Street SW, Washington, DC 20416 and the meeting will be live streamed for the public. Register at <https://bit.ly/IIEAC-Nov23>.

FOR FURTHER INFORMATION CONTACT:

Jennifer Shieh, Designated Federal Officer, Office of Investment and Innovation, SBA, 409 3rd Street SW, Washington, DC 20416, (202) 539-1448 or IIEAC@sba.gov. The meeting will be live streamed to the public, and anyone wishing to submit questions to the SBA Invention, Innovation, and Entrepreneurship Advisory Committee can do so by submitting them via email to IIEAC@sba.gov. Individuals who require an alternative aid or service to communicate effectively with SBA should email the point of contact listed

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

³⁵ See *supra* notes 9 and 10.

³⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁷ 17 CFR 200.30-3(a)(12), (59).

above and provide a brief description of their preferred method of communication.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the inaugural meeting of the SBA Invention, Innovation, and Entrepreneurship Advisory Committee (the "IIEAC"). The IIEAC is tasked with providing advice, insights, and recommendations to SBA on matters broadly related to the U.S. startup and small business innovation ecosystem, and more specifically supporting innovation across the U.S.; developing and/or evolving SBA programs and services to address commercialization hurdles; addressing vulnerabilities and gaps in funding domestic invention and innovation; facilitating and enabling broad access and participation in federal innovation support and funding programs. The final agenda for the meeting will be posted on the IIEAC website at <https://www.sba.gov/about-sba/organization/sba-initiatives/invention-innovation-entrepreneurship-advisory-committee> prior to the meeting. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Public Comment

Any member of the public may submit pertinent questions and comments concerning IIEAC affairs at any time before or after the meeting and participate in the livestreamed meeting of the SBA Invention, Innovation, and Entrepreneurship Advisory Committee on November 15. Comments may be submitted to Jennifer Shieh at IIEAC@sba.gov. Those wishing to participate live are encouraged to register by or before November 8, 2023, using the registration link provided above. Advance registration is strongly encouraged.

Dated: October 17, 2023.

Andrienne Johnson,

SBA Committee Management Officer.

[FR Doc. 2023-23253 Filed 10-19-23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the

collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 19, 2023.

ADDRESSES: Send all comments to Sylvia Ballinger, Director of Marketing, Office of Communications & Public Liaison, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sylvia Ballinger, Director of Marketing, Office of Communications & Public Liaison, (202) 615-2962, sylvia.ballinger@sba.gov, or Curtis B. Rich, Agency Clearance Officer, 202-205-7030, curtis.rich@sba.gov.

SUPPLEMENTARY INFORMATION: The information collected from the public, including our program participants and stakeholders, will help ensure users have an effective, and satisfying experience with the programs and activities offered or sponsored by the Small Business Administration. The information will provide insights into the public's perceptions, experience, and expectations, and help focus attention on areas where communication, training or changes in operations might improve delivery of products or services.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245-0398.

(1) Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Description of Respondents: Program participants and stakeholders.

Form Number: N/A.

Total Estimated Annual Responses: 500,000.

Total Estimated Annual Hour Burden: 70,000.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023-23138 Filed 10-19-23; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12230]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Ethiopia at the Crossroads" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition "Ethiopia at the Crossroads" at The Walters Art Museum, Baltimore, Maryland, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023-23262 Filed 10-19-23; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE**[Public Notice: 12240]****Notice of Public Meeting in Preparation for International Maritime Organization Council 130 Meeting, Assembly 33 Meeting, and Council 131 Meeting**

The Department of State will conduct a public meeting at 10:00 a.m. on Wednesday, November 8, 2023, both in-person at Coast Guard Headquarters in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the 130th session of the International Maritime Organization's (IMO) Council (C 130) from November 21–24, 2023; the 33rd session of IMO Assembly (A 33) from November 27–December 6, 2023; and the 131st session of the IMO Council (C 131) on December 7, 2023, to be held concurrently in London, United Kingdom from Monday, November 21, 2023, to Thursday, December 7, 2023.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants or up to the seating capacity of the room if attending in person. The meeting location will be the United States Coast Guard Headquarters, Ray Evans Conference Room, and the teleconference line will be provided to those who RSVP. To RSVP, participants should contact the meeting coordinator, LT Emily Rowan, by email at Emily.K.Rowan@uscg.mil. LT. Rowan will provide access information for in-person and virtual attendance.

The agenda items to be considered at this meeting mirror those to be considered at Council 130, and include:

- Adoption of the agenda
- Report of the Secretary-General on credentials
- Rules of Procedure
- Strategy, planning and reform
- Resource Management
- Results-based budget for 2024–2025
- Enhancement of multilingualism
- IMO Member State Audit Scheme
- Reports of the Marine Environmental Protection Committee
- Report of the Legal Committee
- Report of the Facilitation Committee
- Report of the Technical Cooperation Committee
- Report of the Consultative Meeting of Contracting Parties to the London Convention 1972 and the Meeting of Contracting Parties to the 1996 Protocol to the London Convention
- Global maritime training institutions
- Report of the Council to the Assembly on the work of the Organization since the thirty-second regular session of the Assembly

- External relations
- Report on the status of the Convention and membership of the Organization
- Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
- Appointment of the External Auditor
- Appreciation of the services of the Secretary-General
- Supplementary agenda items, if any

Please note: the IMO may, on short notice, adjust the C 130 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP.

The agenda items to be considered at this meeting mirror those to be considered at Assembly 33, and include:

- Adoption of the agenda
- Rules of the President and the Vice-Presidents of the Assembly
- Election of the President and the Vice-Presidents of the Assembly
- Application of Article 61 of the IMO Convention—Report of the Council to the Assembly on any request by Members for waivers
- Establishment of the committees of the Assembly
- Consideration of the reports of the committees of the Assembly
- Report of the Council to the Assembly on the work of the Organization since the thirty-second regular session of the Assembly
- Strategy, planning and reform
- IMO Member State Audit Scheme
- IMO Convention
- Consideration of the reports and recommendations of the Maritime Safety Committee
- Consideration of the reports and recommendations of the Legal Committee
- Consideration of the reports and recommendations of the Marine Environment Protection Committee
- Consideration of the reports and recommendations of the Technical Cooperation Committee
- Consideration of the reports and recommendations of the Technical Cooperation Committee
- Consideration of the reports and recommendations of the Facilitation Committee
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1996 Protocol thereto: report on the performance of Secretariat functions and other duties
- Resource management
- Global maritime training institutions
- External relations
- Enhancement of multilingualism

- Report on the status of the Convention and membership of the Organization
- Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
- Election of Members of the Council, as provided for in Articles 16 and 17 of the IMO Convention
- Appointment of Members of the IMO Staff Pension Committee
- Appointment of the External Auditor
- Approval of the appointment of the Secretary-General
- Farewell to Mr. Lim
- Date and place of the thirty-fourth regular session of the Assembly
- Supplementary agenda items, if any

Please note: the IMO may, on short notice, adjust the A 33 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP.

The agenda for Council 131 has not yet been published, but as the first Council meeting after the Assembly, traditionally include the following items:

- Adoption of the agenda
- Election of the Chairman and Vice-Chairman
- Date, place, and duration of the next session of Council
- Supplementary agenda items, if any

Please note: the IMO may, on short notice, adjust the C 131 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate should contact the meeting coordinator, LT Emily Rowan, by email at Emily.K.Rowan@uscg.mil, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, by November 1, 2023. Please note that, due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon request). Additionally, members of the public needing reasonable accommodation should advise the meeting coordinator not later than October 25, 2023. Requests made after that date will be considered but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: <https://www.dco.uscg.mil/IMO>.

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Leslie W. Hunt,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2023–23260 Filed 10–19–23; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 12229]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: “The Cyrus Cylinder” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition “The Cyrus Cylinder” at the Yale Peabody Museum, New Haven, Connecticut, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me

by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–23264 Filed 10–19–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation’s Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before November 6, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the “Nature of Application” portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 5, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
11818–M	Raytheon Company	172.101(j), 172.101(j)(1), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize additional packaging. (modes 1, 3, 4).
12303–M	Halliburton Energy Services, Inc.	173.201, 173.301(f), 173.302a, 173.304a.	To modify the special permit to authorize an additional cylinder design. (modes 1, 2, 3, 4).
15980–M	Windward Aviation Inc .....	.....	To modify the special permit to exempt shipments from 49 CFR 172.400 and from 49 CFR 175.33. (mode 4).
20245–M	Jaguar Instruments Inc	173.302(a), 173.304(a)	To modify the special permit to authorize a cylinder with an increased length. (modes 1, 2, 3, 4).
20500–M	California Department of Toxic Substances Control.	.....	To modify the special permit to authorize use in all natural disaster areas. (mode 1).
20527–M	Procyon-alpha Squared, Inc ...	.....	To modify the special permit to authorize rail as a mode of transportation. (modes 1, 2, 3).
21018–M	Packaging And Crating Technologies, LLC.	.....	To modify the special permit to authorize additional packagings. (modes 1, 2, 3).
21139–M	KULR Technology Corporation	172.600, 172.200, 172.300, 172.700(a), 172.400, 172.500, 173.185(b).	To modify the special permit to authorize an alternative shipping document, to remove the reference to ferry vessel operations, and to clarify the requirement in paragraph 7.b.(2). (modes 1, 2, 3).

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21463-M	Mission Systems Orchard Park Inc.	173.302a(a)(1)	To modify the special permit to authorize a larger volume cylinder. (modes 1, 2, 3, 4, 5).
21521-M	Honda Motor Co., Ltd .....	.....	To modify the special permit to authorize the COPVs to be shipped in an additional outer packaging. (modes 1, 2, 3, 4).

[FR Doc. 2023-23154 Filed 10-19-23; 8:45 am]

BILLING CODE P**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****Hazardous Materials: Notice of Actions on Special Permits**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before November 20, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline

and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 12, 2023.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof

Special Permits Data—Granted

11818-M	Lockheed Martin Corporation	172.301(f), 172.101(j), 172.101(j)(1), 173.304a(a)(2).	To modify the special permit to authorize an additional hazardous material.
12783-M	Cool Renewal, LLC	173.304a(a)(1), 173.306(a)	To modify the special permit to authorize the transportation in commerce of small units of certain compressed gas, intended for medical use as limited quantities.
14992-M	VIP Transport, Inc	173.196(a), 173.196(b), 173.199, 178.609.	To modify the special permit to authorize smaller inner packagings.
16318-M	Technical Chemical Company	173.304(d), 173.167(a), 173.302(a), 173.306(i).	To modify the special permit to authorize additional hazardous materials and transportation of the hazardous materials as limited quantities.
20681-M	Proserv UK Ltd	172.301(c), 173.302(a)(1), 173.304(a).	To modify the special permit to authorize additional cylinder coatings.
20936-M	Co2 Exchange LLC	171.2(k), 172.200, 172.300, 172.700(a), 172.400, 172.500.	To modify the special permit to authorize cylinders to be packaged within an outer fiberboard box with or without a dispensing machine.
20998-M	Daicel Safety Systems Americas, Inc.	173.301(a)(1), 173.302(a)(1), 178.65(c)(3).	To modify the special permit to remove the requirement that a flattening test be conducted, authorize alternative marking, and authorize a pressure relief device designed to an alternative standard.
21297-M	Luxfer Canada Limited	173.301(i), 178.75	To modify the special permit to authorize mounting of a cylinder within a structural frame during transportation.
21469-N	Romeo Systems, Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
21580-N	Arkema Inc	173.301, 173.302	To authorize the transportation in commerce of Boron Trifluoride (BF3) in a non-DOT specification cylinder.
21584-N	National Air Cargo Group, Inc	172.204(c)(3), 172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce by cargo-only aircraft of Class 1 explosives which are forbidden or exceed the quantities authorized in 172.101 Column 9B.
21599-N	Lanxess Corporation	178.274(b)(1)	To authorize the manufacture, mark, sale, and use of non-specification "T20" UN portable tanks conforming to all requirements of a UN portable tank, except as specified herein.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21629-N	Space Bd Inc	172.101(j), 173.185(a)(1), 173.185(e)(7).	To authorize the transportation in commerce of prototype and low production lithium ion batteries including those contained in or packed with equipment.
21631-N	Arkema Inc	173.173(b)(1)	To authorize the one-way transportation in commerce of 532 non-DOT specification 1A1 metal drums containing resin solution.
21646-N	Delta Air Lines, Inc	175.10, 175.75	To authorize the transportation in commerce of certain Division 2.2 materials that have been loaded in an alternative manner.

Special Permits Data—Denied

9998-M	Accumulators, Inc	173.302(a)	To modify the special permit to authorize additional accumulators.
21163-M	United Initiators, Inc	178.345–10(b)(1)	To modify the special permit to authorize additional hazardous materials.
21232-N	Scandinavian Airlines System Denmark-Norway-Sweden.	175.75(c)	To authorize the transportation in commerce of aviation fuel contained in a fuel tank by passenger-carrying aircraft in quantities that exceed the limitation for materials loaded in an inaccessible manner.
21404-N	Adair Investments Inc	173.219(c)(4), 173.21(f)(3)(i), 199.9(a)(1).	To authorize the transportation of lithium batteries, brake cleaners, starting fluid, and carburetor cleaners.
21524-N	Tea Technologies Inc	180.205(c), 180.205(f), 180.205(g).	To authorize the transportation in commerce of composite tubes that have been requalified using modal acoustic emission (MAE) in lieu of volumetric and internal visual examination.
21573-N	Sharpsville Container Corporation.	178.274(j)(3), 178.274(j)(4)	To authorize the transportation in commerce of portable tanks containing certain hazardous materials where the tank has not been leakage tested in accordance with 49 CFR 178.274(j).
21587-N	Textron Aviation Defense LLC	173.220(f)	To authorize the transportation in commerce of an aircraft fuselage and canopy.

Special Permits Data—Withdrawn

14152-M	Entegris, Inc	173.27(f)	To modify the special permit to authorize an additional hazardous material.
21579-N	KULR Technology Corporation	173.6(a)(1), 173.6(d)	To authorize the manufacture, mark, sale, and use of packaging for the purpose of transporting lithium batteries as Materials of Trade in excess of the package weight limitations and vehicle aggregate weight limitations.

[FR Doc. 2023–23155 Filed 10–19–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety

has received the application described herein.

DATES: Comments must be received on or before November 20, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the “Nature of Application” portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH-13, 1200 New Jersey Avenue Southeast Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 5, 2023.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
21632–N	Weilert Enterprises, Inc	173.56(b)	To authorize the manufacture, mark, sale, and use of packaging for cartridges, power device classed as Division 1.4S for the transportation in commerce of these hazardous materials. (mode 5).
21633–N	Exxonmobil Chemical Company.	180.352(b)(1)	To authorize the transportation in commerce of Division 4.3 materials in UN 31A steel intermediate bulk containers that have been requalified using an alternative leakproofness test using nitrogen rather than oxygen. (mode 1).
21634–N	Astra Space Operations, Inc ..	173.301(f)(1), 173.302a(a)(1), 178.35(e).	To authorize the transportation in commerce of non-DOT specification cylinders, incorporated into a propellant management system within a satellite. The cylinders are based on the ISO 11119–2 Standard and are not equipped with pressure relief devices. (modes 1, 2, 3, 4, 5).
21635–N	Point One USA, LLC	173.4b(a)(10)(ii)	To authorize the transportation of colorimetric simulant kits on passenger aircrafts. (mode 5).
21636–N	Tradewater LLC	173.306(a)(1)	To authorize the transportation in commerce of inner receptacles containing refrigerant gases in quantities exceeding 4 fluid ounces under the limited quantity exception. (modes 1, 2, 3).
21638–N	Bae Systems Controls Inc	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21642–N	Air Liquide Electronics U.S. LP.	173.23(a)	To authorize the one time shipment of non-dot cylinders of Xenon (UN2036) to the USA for discharge and then destruction. (modes 1, 2, 3).
21644–N	G-Shang Metal Corporation	180.209	To authorize the transportation in commerce of DOT 3AL cylinders that have been requalified every 10 years instead of every 5 years. (modes 1, 3).
21648–N	Bentley Motors Incorporated ..	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21649–N	Minnesoda Club LLC	171.2(k)	To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication. (modes 1, 2).
21650–N	Bollore Logistics Germany GmbH.	172.400, 172.101(j), 172.300, 173.185(a)(1), 173.185(e)(7), 173.301(f), 173.302a(a)(1).	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.2 and 2.3 liquefied and compressed gases and other hazardous materials for use in specialty cooling applications such as satellites and military aircraft. (modes 1, 4).

[FR Doc. 2023–23153 Filed 10–19–23; 8:45 am]

BILLING CODE P**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open meeting of the Taxpayer Advocacy Panel Joint Committee****AGENCY:** Internal Revenue Service (IRS) Treasury.**ACTION:** Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and

suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference through the Microsoft Teams Platform.

DATES: The meeting will be held Thursday, November 16, 2023.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, November 16, 2023, at 3:00 p.m. Eastern Time via teleconference. The public is invited to

make oral comments or submit written statements for consideration. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St., MC 1005, Dallas, TX 75242 or contact us at the website: <http://www.improveirs.org>.

The agenda will include the potential project referrals from the committees, and discussions on priorities the TAP will focus on for the 2023 year. Public input is welcomed.

Dated: October 17, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–23263 Filed 10–19–23; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

RIN 0648–BL52

[Docket No. 230928–0235]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island

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

ACTION: Final rule.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS promulgates regulations to govern the incidental taking of marine mammals incidental to Revolution Wind, LLC's (Revolution Wind), a subsidiary wholly owned by Orsted Wind Power North America, LLC (Orsted), construction of the Revolution Wind Offshore Wind Energy Project (hereafter known as the "Project") in Federal and State waters offshore Rhode Island, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A–0486 (Lease Area) and along two export cable routes to sea-to-shore transition points (collectively referred to as the "Project Area"), over the course of 5 years (November 20, 2023 through November 19, 2028). These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during construction-related activities within the Project Area during the effective dates of the regulations, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: This rulemaking and issued LOA are effective from November 20, 2023 through November 19, 2028.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of Revolution Wind's Incidental Take Authorization (ITA) application and supporting documents, received public comments, and the proposed rulemaking, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This final rule, as promulgated, provides a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) for NMFS to authorize the take of marine mammals incidental to construction of the Project within the Project Area. NMFS received a request from Revolution Wind to incidentally take individuals of 16 species of marine mammals, comprising 16 stocks (10 stocks by Level A harassment and Level B harassment and 6 stocks by Level B harassment), incidental to Revolution Wind's 5 years of construction activities. No mortality or serious injury was requested nor is it anticipated or authorized in this final rulemaking.

Legal Authority for the Final Action

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking, "other means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar

significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as "mitigation"); and requirements pertaining to the monitoring and reporting of such takings.

As noted above, no serious injury or mortality is anticipated or authorized in this final rule. Relevant definitions of MMPA statutory and regulatory terms are included below:

- *U.S. Citizens*—Individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) (50 CFR 216.103);
 - *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.3);
 - *Incidental harassment, incidental taking, and incidental, but not intentional taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental (see 50 CFR 216.103);
 - *Serious Injury*—any injury that will likely result in mortality (50 CFR 216.3);
 - *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
 - *Level B harassment*—any act of pursuit, torment, or annoyance which 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 (16 U.S.C. 1362(18); 50 CFR 216.3).
- Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for proposing and, if appropriate, issuing regulations and an associated LOA(s). This final rule establishes permissible methods of taking and mitigation, monitoring, and reporting requirements for Revolution Wind's construction activities.

Summary of Major Provisions Within the Final Rule

The major provisions of this final rule are:

- The authorized take of marine mammals by Level A harassment and/or Level B harassment;
- No authorized take of marine mammals by mortality or serious injury;
- The establishment of a seasonal moratorium on impact pile driving of foundation piles during the months of

the highest presence of North Atlantic right whales (*Eubalaena glacialis*) in the Lease Area (December 1–April 30, annually), unless prior approval from NMFS for pile driving in December;

- A requirement for unexploded ordnance or munitions and explosives of concern (UXO/MEC) detonations to only occur during hours of daylight and not during hours of darkness;

- A requirement for both visual and passive acoustic monitoring (PAM) to occur by trained, NOAA Fisheries-approved Protected Species Observers (PSOs) and PAM operators (where required) before, during, and after select activities;

- A requirement for training for all Revolution Wind personnel to ensure marine mammal protocols and procedures are understood;

- The establishment of clearance and shutdown zones for all in-water construction activities to prevent or reduce the risk of Level A harassment and to minimize the risk of Level B harassment;

- A requirement to use sound attenuation device(s) during all foundation impact pile driving installation activities and UXO/MEC detonations to reduce noise levels to those modeled assuming 10 decibels (dB);

- A delay to the start of foundation installation and UXO/MEC detonations if a North Atlantic right whale is observed at any distance by PSOs or acoustically detected within certain distances;

- A delay to the start of foundation installation and UXO/MEC detonations if other marine mammals are observed entering or within their respective clearance zones;

- A requirement to shut down impact pile driving (if feasible) if a North Atlantic right whale is observed or if any other marine mammals are observed entering their respective shut down zones;

- A requirement to implement sound field verification during impact pile driving of foundation piles and during UXO/MEC detonations to measure *in situ* noise levels for comparison against the modeled results;

- A requirement to implement soft-starts during impact pile driving using the least amount of hammer energy necessary for installation;

- A requirement to implement ramp-up during the use of high-resolution geophysical (HRG) marine site characterization survey equipment;

- A requirement for PSOs to continue to monitor for 30 minutes after any impact pile driving for foundation

installation and after any UXO/MEC detonations;

- A requirement for the increased awareness of North Atlantic right whale presence through monitoring of the appropriate networks and Channel 16, as well as reporting any sightings to the sighting network;

- A requirement to implement various vessel strike avoidance measures;

- A requirement to implement measures during fisheries monitoring surveys, such as removing gear from the water if marine mammals are considered at-risk or are interacting with gear; and

- A requirement for frequently scheduled and situational reporting including, but not limited to, information regarding activities occurring, marine mammal observations and acoustic detections, and sound field verification monitoring results.

NMFS must withdraw or suspend an LOA issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or reporting measures are not being substantially complied with (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.206(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375; 50 CFR 216.106(g)).

Fixing America's Surface Transportation Act (FAST–41)

This project is covered under Title 41 of the Fixing America's Surface Transportation Act, or "FAST–41." FAST–41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST–41 also places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST–41 covered project (42 U.S.C. 4370m–6(a)(1)(A)).

Revolution Wind's project is listed on the Permitting Dashboard, where milestones and schedules related to the environmental review and permitting for the project can be found at: <https://www.permits.performance.gov/permitting-projects/revolution-wind-farm-project>.

Summary of Request

On October 8, 2021, Revolution Wind submitted a request for the

promulgation of regulations and issuance of an associated LOA to take marine mammals incidental to construction activities associated with the Project in the Project Area. The request was for the incidental, but not intentional, taking of a small number of 16 marine mammal species (comprising 16 stocks) by Level B harassment (all 16 stocks) and by Level A harassment (10 species or stocks). Revolution Wind did not request and NMFS neither expects nor authorizes incidental take by serious injury or mortality.

In response to our questions and comments, and following extensive information exchange between Revolution Wind and NMFS, Revolution Wind submitted a final version of the revised application on February 23, 2022. NMFS deemed it adequate and complete on February 28, 2022. This final application is available on NMFS' website at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy>.

On March 21, 2022, NMFS published a notice of receipt (NOR) of Revolution Wind's adequate and complete application in the **Federal Register** (87 FR 15942), requesting public comments and information on Revolution Wind's request during a 30-day public comment period. During the NOR public comment period, NMFS received comment letters from two environmental non-governmental organizations: Oceana and the Rhode Island Saltwater Anglers Association (RISSA).

On December 23, 2022, NMFS published the proposed rule for the Revolution Wind Project in the **Federal Register** (87 FR 79072). In the proposed rule, NMFS synthesized all of the information provided by Revolution Wind, all best available scientific information and literature relevant to the proposed project, outlined, in detail, proposed mitigation designed to effect the least practicable adverse impacts on marine mammal species and stocks as well as proposed monitoring and reporting measures, and made preliminary negligible impact and small numbers determinations. The public comment period on the proposed rule was open for 45-days on <https://www.regulations.gov> starting on December 23, 2022 and closed after February 6, 2023. Specific details on the public comments received during this 45-day period are described in the Comments and Responses section.

NMFS has previously issued four Incidental Harassment Authorizations (IHAs) to Orsted, Revolution Wind's

parent company, for high resolution geophysical marine site characterization surveys of Revolution Wind's BOEM Lease Area OCS-A 0486, two other BOEM lease areas (OCS-A 0487, OCS-A 0500), and along potential export cable routes (see 84 FR 52464, October 2, 2019; 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022; and 87 FR 61575, October 12, 2022). To date, Orsted has complied with all IHA requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section. These monitoring reports can be found on NMFS' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations (87 FR 46921, August 1, 2022) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (UME). Should a final vessel speed rule be issued and become effective during the effective period of these regulations (or any other MMPA incidental take authorization), the authorization holder will be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders will be required to comply with the requirements of the vessel speed rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in

any final vessel speed rule, the measures in the MMPA authorization will remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule will become effective immediately upon the effective date of any final vessel speed rule, and when notice is published on the effective date, NMFS will also notify Revolution Wind if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer required.

Description of the Specified Activities

Overview

Revolution Wind plans to construct and operate the Project, a 704 megawatt (MW) offshore wind farm in the Project Area. The Project will allow the states of Rhode Island and Connecticut to meet their renewable energy goals. The Project, which includes the Revolution Wind Farm (RWF) and Revolution Wind Export Cable corridor (RWECC), will consist of several different types of permanent offshore infrastructure, including wind turbine generators (WTGs; *e.g.*, Siemens Gamesa 11 megawatt (MW)) and associated foundations, offshore substations (OSS), offshore substation array cables, offshore export cables, and substation interconnector cables. Overall, Revolution Wind will conduct the following specified activities: install 79 WTGs and 2 OSS on monopile foundations via impact pile driving; install and subsequently remove cofferdams to assist in the installation of the export cable route by vibratory pile driving, or installation of a casing pipe by pneumatic hammering and goal posts by vibratory pile driving; several types of fishery and ecological monitoring surveys; placement of scour protection; trenching, laying, and burial activities

associated with the installation of the export cable route from OSSs to shore-based converter stations and inter-array cables between turbines; HRG vessel-based site characterization surveys using active acoustic sources with frequencies of less than 180 kilohertz (kHz); the detonation of up to 13 UXOs/MECs of different charge weights, as necessary; transit within the Project Area and between ports and the Lease Area to transport crew, supplies, and materials to support pile installation via vessels, and WTG operation. All offshore cables will connect to onshore export cables, substations, and grid connections, which will be located at Quonset Point in North Kingstown, Rhode Island. Marine mammals exposed to elevated noise levels during impact and vibratory pile driving, detonations of UXOs/MECs, and/or site characterization surveys may be taken by Level A harassment and/or Level B harassment, depending on the specified activity. A detailed description of the Project is provided in the published notice of the proposed rule (87 FR 79072, December 23, 2022).

Dates and Duration

Revolution Wind anticipates its specified activities will occur throughout all 5 years of the regulations, beginning on November 20, 2023 and continuing through November 19, 2028. Revolution Wind anticipates the following construction schedule over the 5 year period (Table 1). Revolution Wind has noted that these are the best and conservative estimates for activity durations but that the schedule may shift due to weather, mechanical, or other related delays. Additional information on dates and activity-specific durations can be found in the proposed rule and are not repeated here.

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Table 1 -- Revolution Wind's Construction and Operations Schedule^{1, 2}

Project Phase	Project Phase Component	Expected Duration and Timing
RWF Construction	WTG foundation installation	~ 5 months Q2 - Q3 2024
	OSS foundation installation	~ 2 – 3 days Q2 2024
	<i>Array cable installation</i>	~ 8 months Q1 - Q4 2024
	HRG surveys	Any time of year
	UXO/MEC detonation	~ up to 7 days
RWECC Construction	Cable landfall installation (temporary cofferdam, or casing pipe and goal post installation and removal)	~ up to 4 months Q4 2023 - Q1 2024
	<i>Offshore export cable installation</i>	~ 5 months Q4 2023 – Q4 2024
	HRG surveys	Any time of year
	UXO/MEC detonation	~ up to 6 days
Operations	HRG surveys	Any time of year Q4 2024 – Q3 2028

Note: “Q1, Q2, Q3, and Q4” each refer to a quarter of the year, starting in January and comprising 3 months each. Therefore, Q1 represents January through March, Q2 represents April through June, Q3 represents July through September, and Q4 represents October through December.

1 - Project components in italics are not expected to result in take.

2 - We acknowledge that the schedule may need to shift, given unforeseeable circumstances (e.g., inclement weather, mechanical difficulties) but the dates and durations presented here represent the most realistic schedule.

Specific Geographic Region

A detailed description of the Specific Geographic Region is provided in the proposed rule as published in the **Federal Register** (87 FR 79072, December 23, 2022). Since the proposed rule was published, no changes have been made to the Specified Geographic

Region. Generally, Revolution Wind's specified activities (*i.e.*, impact pile driving of WTGs and OSS monopile foundations; vibratory pile driving (installation and removal) of temporary cofferdams, or pneumatic hammering of casing pipes and vibratory pile driving of goal posts; placement of scour protection; trenching, laying, and burial

activities associated with the installation of the RWECC and inter-array cables; HRG site characterization surveys; UXO/MEC detonation; and WTG operation) are concentrated in the Project Area. Vessel transit from ports in Maryland and Virginia could also occur; therefore, vessel use could occur in the Mid-Atlantic Bight.



A notice of proposed rulemaking was published in the **Federal Register** on December 23, 2022 (87 FR 79072) and a 15-day extension to the public comment period was published on January 19, 2023 (88 FR 3375). The proposed rulemaking described, in detail, Revolution Wind's specified activities, the specific geographic region of the specified activities, the marine

NMFS received 404 comment submissions, including from the Marine Mammal Commission (Commission), several private organizations, and 396 from private citizens. Most of these comments were out-of-scope or not applicable to this specific action and location (e.g., specific opposition to offshore wind development offshore of New Jersey; general opposition to or support of offshore wind projects;

concerns for other species outside NMFS' jurisdiction (*i.e.*, birds)), and are not described herein or discussed further. Four comment letters were from environmental non-governmental organizations, including one from the Responsible Offshore Development Alliance (RODA), one from Oceana, Inc. (Oceana), and two from the Natural Resources Defense Council (NRDC), of which one was a comment letter with an attachment and the other was a request to extend the comment period an additional 15 days (hence, the extension published in the **Federal Register** on January 19, 2023 (88 FR 3375)). We also received one comment letter from a public organization, the Conservation Law Foundation (CLF). These six letters (excluding the NRDC request for a 15-day comment period extension on the proposed regulations) contained substantive information that NMFS considered in its estimated take analysis, final determinations, and final regulations. In addition, we received comment letters from Salty Enterprises, the Washington Dungeness Crab Association, and a group of Rhode Island fishermen. The comments are described below, along with NMFS' responses.

All substantive comments and letters are available on NMFS' website: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. Please review the corresponding public comment link for full details regarding the comments and letters.

Comment 1: The Commission recommended that, until JASCO Applied Sciences' (hereafter, "JASCO") model has been validated with in-situ measurements from the impact installation of monopiles and pin piles in the northwest Atlantic, NMFS should require Revolution Wind and thus JASCO to re-estimate the various Level A harassment and Level B harassment zones for the final rule using source levels that are at a minimum 3 dB greater than those currently used.

Response: The Commission has expressed concerns about the lack of validation of JASCO's models in previous Commission letters for Orsted's other wind projects. JASCO has compared their source model predictions to an empirical model prediction by the Institute of Technical and Applied Physics (ITAP). The empirical model is based on a large data set of pile driving sounds measured at 750 meters (m) from the source collected during installation of large-diameter piles (up to 8 m) during wind farm installation in the North Sea (Bellmann, 2020). As no noise

measurements exist for tapered 8/11-m monopile at this time (yet to be installed offshore), the ITAP prediction facilitates a way of validating the source levels of the numerical finite difference (FD) model. The ITAP data are averaged across different scenarios—pile sizes are grouped, which includes different hammers, water depths, depths of penetration, and environmental conditions—and the 95th percentile level is reported, whereas the aim of JASCO's modeling is to estimate the median value. While the ITAP forecast and the FD source predictions were comparable (see Appendix I of the Revolution Wind Underwater Acoustic and Exposure Modeling report (Küsel *et al.*, 2022)), there is variance in the underlying ITAP data and there are parametric choices for the FD model in the different environments, so an exact match is not expected. As part of the comparison, it was found that different (but reasonable) parametric input choices in the FD modeling can result in output differences on the order of the variance in the ITAP data so it was concluded that the FD modeling approach performed as well as can be discernible given the available data. While adding 3 dB to the JASCO predictions at 750 m may bring JASCO's source predictions into line with the finite-element (FE) predictions for the portmanteau combining computation, comparison, and pile (COMPILE) scenario but it is not clear that this would be more accurate. This approach assumes that the FE models are correct but Lippert *et al.* (2016) also state "a drawback of (the FE) approach is that it simulates the energy loss due to friction in an indirect and rather nonphysical way." The Commission also suggested that NMFS could have used damped cylindrical spreading model (DCSM; Lippert *et al.*, 2018) and the source levels provided by the time-domain finite difference pile-driving source model (TDFD PDSM); however, for reasons described herein, NMFS has determined JASCO's model results are reliable and achievable.

Recent measurements taken during the Coastal Virginia Offshore Wind (CVOW) Pilot Project reported the range to the marine mammal Level B threshold (160 dB re 1 microPascal (1μPa)) from the 7.8-m pile installed with a double big bubble curtain to be 3,891 m (12,765.75 feet (ft)) when using a hammer operating at a maximum of 550 kilojoules (kJ) (WaterProof, 2020). JASCO's model prediction for 7/12-m tapered piles using a 4,000 kJ hammer is 3,833 m (12,575 ft). The Commission states that, based on the CVOW reported

sound levels, it is unrealistic that an impact hammer with seven times more energy intensity would result in a smaller harassment zone. NMFS disagrees. The 3,891-m distance to the Level B harassment threshold measured during the CVOW Pilot Project cited by the Commission was obtained based on the maximum measured sound pressure level (RMS SPL), which is not an ideal statistic to base estimates of Level B harassment isopleths, as it is not representative of average operating conditions and represents one hammer strike. Further, small differences in the propagation environment could account for the ranges being more comparable than expected. Importantly, as described below, NMFS is also now in receipt of measurements from the South Fork project which indicate JASCO's predicted distance to the Level B harassment threshold is realistic and attainable. Based on the expected variance between the Revolution Wind and CVOW projects and measurement data from South Fork (see below), it cannot be concluded that the CVOW measured results (using the maximum RMS SPL reported) indicate that JASCO's 4,684 m modeled distance to Level B harassment threshold should be increased.

Importantly, since the proposed rule phase, NMFS has received interim sound field verification reports from the South Fork Wind project, which used JASCO's modeling. In all but one case, and out of six tapered piles (8/10-m or 7/9.5-m) installed, the measured distances to NMFS' Level B harassment threshold were lower than JASCO's model predicted. The distance to NMFS Level B harassment threshold for the South Fork project was modeled as 4,684 m while *in-situ* measurements identified distances, excluding the one aforementioned pile, ranging from 1.84 kilometers (km) to 3.25 km. JASCO's modeling predicts the distances to the Level B harassment threshold during installation of Revolution Wind monopiles will be approximately 3.8 km in summer, which is slightly greater than the loudest pile installed during the South Fork Wind results. We note that South Fork Wind determined that the one pile generating noise levels above those predicted (the first pile) did so due to a malfunctioning noise attenuation system which was quickly rectified and deployed appropriately on all future piles. Further, in this final rule, we are requiring Revolution Wind's measured sound levels do not exceed those modeled, assuming 10 dB, for at least three consecutively measured monopiles. Based on all these

reasons, NMFS is not requiring Revolution Wind to remodel the harassment zone sizes by adding 3 dB to the source levels and is, instead, carrying forward the modeling results as presented in the proposed rule.

Of note, NMFS has also received interim sound field reports from Vineyard Wind. However, comparisons between the modeled and measured results are not as directly applicable as the South Fork Wind results due to assumptions in the model and operations. Therefore, the Vineyard Wind data are less useful in judging predicted alignment between modeled and measured zones for the Revolution Wind project.

Based on this discussion and given our consideration of the best available scientific information, including available interim sound field verification (SFV) reports from other offshore wind construction projects in the United States, we disagree with the suggestions made by the Commission. NMFS has incorporated the best available scientific information into this final rule, using recent measurements as well as estimates obtained through JASCO's modeling.

Comment 2: The Commission suggested that JASCO should consider revising its exposure modeling to include single-day simulations for stationary, discrete sound sources and numerous Monte Carlo simulations (e.g., at least 30) for modeling reports for future rules.

Response: JASCO typically uses 7-day simulations to get a representative sample of the installation process (e.g., impact piling every day or every other day). From those 7-day simulations, several 24-hour windows within the 7-day simulations are used to find the average exposure expected in a 24-hour period that includes impact pile driving. The average 24-hour estimates are then scaled by the number of days of impact pile driving. The use of the 7-day simulation allows for a robust probability calculation. The Commission recommends that, instead, JASCO run 30 single-day simulations to generate an average daily exposure. While NMFS makes recommendations, as appropriate, regarding the inputs, assumptions, and methods used by applicants to model and estimate marine mammal take, there is no one single correct overall methodology. The Commission does not provide any information to support an assertion that the method used by JASCO is not appropriate or sufficient, and NMFS supports the use of this methodology.

Furthermore, it is unclear what the Commission means by "stationary,

discrete sound sources." If the sources referred to are monopiles, then JASCO's modeling approach does use a Monte Carlo approach for sampling the expected sound fields. With the typical modeling density of 0.5 animats/km², there are usually tens of thousands of animats meaning there are tens of thousands of Monte Carlo samples. If the suggestion is to run the simulations (with tens of thousands of animats) 30 times, that is equivalent to increasing the modeling density by 30. Previous work, such as the work done by Houser (2006), has indicated that such high modeling densities are not necessary. Please refer to NMFS' related response to Comment 1.

Comment 3: The Commission recommended that NMFS authorize Level A harassment (permanent threshold shift (PTS)) takes for fin whales, humpback whales, minke whales, common dolphins, bottlenose dolphins, and Atlantic white-sided dolphins during UXO/MEC detonations and increase to group size, if needed, in the final rule.

Response: NMFS concurs with the Commission's general recommendation and notes that the Commission did not provide specific Level A harassment (PTS) take numbers NMFS should authorize in the final rule. As described in the proposed rule, take by Level A harassment is considered less likely given the required shutdown zones and the instantaneous duration of the detonation, however, NMFS acknowledges the large mitigation and monitoring zone size (particularly for heavier charge weight UXOs/MECs) required for this activity, the cryptic nature of some marine mammal species (e.g., minke whales, dolphin spp.), and that the authorized take numbers do not fully account for the effectiveness of the required mitigation measures other than the 10 dB noise attenuation incorporated in acoustic and exposure modeling. Therefore, NMFS is conservatively authorizing the number of model-estimated takes by Level A harassment (PTS) (increased to group size when the modeled exposures were less than a single group size) incidental to UXO/MEC detonations that were included in the exposure estimate table (Table 23) in the proposed rule: 2 fin whales (modeled exposures = 1.2), 2 humpback whales (modeled exposure = 0.9), 8 minke whales (modeled exposures = 7.7), 35 common dolphins (modeled exposure = 0.4), 8 bottlenose dolphins (Western North Atlantic offshore stock) (modeled exposure = 0.1), and 28 Atlantic white-sided dolphins (modeled exposure = 0.1). Consistent with this rationale, NMFS is

also authorizing Level A harassment (PTS) of two sei whales (modeled exposure = 0.5) based on the result of exposure modeling rounded to group size.

Comment 4: The Commission recommended that NMFS revise its take estimates for impact installation of monopiles based on the possibility that only a single monopile is installed per day over 79 days rather than three per day over 26 days.

Response: The Commission asserted that JASCO should have conducted single-day simulations adjusted by the respective density and multiplied by the number of days of each activity (29 days of the highest mean density month). Further, as addressed in Comment 2, the Commission suggested that single-day simulations run 30 or 50 times per activity, species, and season are more consistent with other entities' methods for conducting exposure modeling and would reduce the variance and standard error in the predictions as compared to single seven-day simulations. Regarding density seeding, the Commission did not provide a justification for the claim that JASCO's assumptions used to seed its exposure modeling were inappropriate. Additionally, the Commission did not provide references for the other "entities" that have conducted exposure modeling using single-day simulations, so we are unable to make direct comparisons. We can, however, further explain and address the use of seven-day simulations. JASCO ran JASCO's Animal Simulation Model Including Noise Exposure (JASMINE) simulations for seven days, assuming piling every day. Separate simulations were run for each scenario (e.g., pile diameter/number of piles per day/season combination). The average number of exposures for a 24-hour window for the scenario in question was then multiplied by the number of days planned for that scenario. For example, if the scenario includes installation of three 7/15-m WTG monopiles per day in the summer, JASCO ran the simulation for 7 days, resetting exposures each day. If the daily counts were 20, 19, 21, 20, 19, 22, and 20 the average number of exposures per day would be 20.14. If Revolution Wind plans to install that particular configuration for 5 days, the exposure estimate would be $20.14 \times 5 = 100.71$.

JASCO conducted 7-day simulations because there is some variation in the exposure estimates due to the statistical nature of the exposure model and the approach captures installation conditions in multiple possible pile locations across the wind farm area. Modeling every pile location in the area

is not practicable due to computational limitations. For sequential piling simulations, where more than one pile is installed per day, the sound fields may overlap but are temporally separated. Whether or not a particular animal is exposed to sound from installation of one or the other, both, or all piles is dependent on the spacing of the locations and the swimming behaviors of the animals. JASCO modeled all other scenarios (e.g., one pile per day, 7/12-m monopile, summer) completely separately and multiplied the resulting average number of exposures per day for a given scenario by the number of days Revolution Wind plans to conduct the scenario.

The Commission cited an assumption in the take estimate methodology for installation of monopiles that could push the take estimate in the direction of less than the maximum expected takes. However, there are multiple other assumptions in the take estimate methodology that consider conditions that would result in the maximum possible takes or even an overestimate of possible takes. When all of these assumptions are considered together, NMFS expects the take estimation model and methodology to produce the maximum take that could occur incidental to the specified activity.

While Revolution Wind acknowledged that it may not install three piles every day, it indicated it is capable of installing up to three piles per day with the goal is to complete installation as quickly as possible. Hence, to assume only one monopile per day everyday (as recommended by the Commission) would not be consistent with what Revolution Wind, a company with offshore wind farm installation experience, indicated is possible or is planned.

The exposure estimates contained within the proposed rule are a product of modeling that assumes three piles are driven per day. This assumption is most influential when estimating the number of Level B harassment exposures but provides minimal influence over the number of Level A harassment exposures modeled. There are several conservative assumptions that offset the potential to underestimate take should Revolution Wind not be able to install three piles per day every day, including, but not limited to, all piles are installed during 29 days of the highest density month for each species from May–December. This is conservative because pile driving every day within a given month is not possible due to historical weather patterns and potential technical issues that may be encountered and the highest density of every species does

not occur in the same month. It is more likely that pile driving will occur over several months in which marine mammal species' densities are lower. For example, for North Atlantic right whales, December is the highest density month (from May–December); this maximum density value was thus conservatively incorporated in take estimation even though NMFS added a requirement in the final rule that Revolution Wind must not plan to impact pile drive monopiles during December, unless NMFS gives approval due to unforeseen circumstances. Further, for some species, group size or PSO data adjustments were made that increased the amount of take authorized compared to the modeled exposure estimates. In addition, the modeled exposure estimates on which the amount of take authorized is based for some species (versus group size or PSO data adjustments) do not consider natural avoidance of marine mammals to noise levels that could elicit PTS, or the use of mitigation such as shutdown or clearance zones, which are designed to effect the least practicable adverse impact on marine mammals, including North Atlantic right whales (e.g., pile driving may not commence and must shut down if a North Atlantic right whale is observed at any distance).

NMFS has retained the exposure estimate methodology from the proposed rule despite the potential for less pile driving per day (equating to more days of pile driving) for the reasons provided above. In some cases, as described in this final rule, we have increased the amount of take authorized from that proposed for some species (e.g., increased Level A harassment for marine mammals with modeled Level A harassment exposures) (see Comments 3, 5, and 6). Furthermore, as described above, there are numerous other conservative assumptions in the model such that, when considered together, support NMFS assessment that the number of take authorized represents the number of take expected to occur incidental to the impact installation of monopiles.

For these reasons, NMFS disagrees with the Commission's assessment that the number of take is underestimated for monopile installation and has not adjusted take based on the possibility that only a single monopile is installed per day.

Comment 5: The Commission recommended that NMFS should authorize the model-estimated Level A harassment takes of fin whales, minke whales, sei whales, harbor porpoises, gray seals, and harbor seals during impact installation of monopiles.

Response: NMFS agrees with the Commission that some Level A take of the species referenced may occur; however, NMFS disagrees that the full number of modeled Level A exposures should equate to the number of take authorized for all species. The exposure modeling resulted in the following estimated number of Level A harassment (PTS) exposures incidental to impact installation of monopiles: 7 humpback whales, 7 fin whales, 3 sei whales, 61 minke whales, 321 harbor porpoises, 5 gray seals, and 32 harbor seals. Revolution Wind requested and NMFS proposed to authorize in the proposed rule 7 Level A harassment (PTS) takes of humpback whales because the size of the large whale shutdown zone (summer 2.3 km; winter 4.4 km) is smaller than the distance to the PTS Level A harassment isopleth (summer 2.66 km; winter 6.29 km) for this species. NMFS did not propose Level A harassment of other marine mammals because Revolution Wind did not request it and in consideration of mitigation measures, such as a prescribed shutdown zone that is larger than the 95 percent exposure range ($ER_{95\%}$) Level A harassment (PTS) zone for all species except, as noted, humpback whales. While NMFS carried this analysis forward in the proposed rule, in making the final decision to authorize Level A harassment of the additional species indicated above, NMFS considered the impracticality of implementing shutdown measures under certain pile installation circumstances (i.e., pile instability or pile refusal) for safety concerns, and the cryptic nature of minke whales, harbor porpoises, gray seals, and harbor seals (particularly in higher sea states or reduced visibility conditions). Although the combination of visual and acoustic monitoring is designed to reliably detect marine mammals such that effective mitigation can be implemented, NMFS acknowledges PTS may not be entirely avoidable.

Density-based exposure modeling results indicate there is potential for 7 fin whale, 3 sei whale, 61 minke whale, 321 harbor porpoise, 32 harbor seal, and 5 gray seal PTS exposures. These numbers represent the potential for PTS absent consideration of any mitigation or natural aversion that would prevent them from approaching at the closer distances associated with PTS and are based on the assumption that all piles would be driven in the highest density month (May through December) for any given species. Hence, based on modeling assumptions alone, these values can be considered a conservative.

As described above, in the proposed rule, based on Revolution Wind's request, we considered the potential for shutdown measures to alleviate potential for PTS except for humpback whales. In consideration of the Commission's comment, we re-evaluated the potential for marine mammals of the aforementioned species to remain undetected and remain close enough and for long enough duration to accumulate energy levels necessary to elicit PTS. NMFS has determined that where PTS density-based exposure estimates are very low (*i.e.*, three sei whales, five gray seals), exposures could occur. However, where exposure estimates are higher, it would be overly conservative to assume that all exposures would occur given the required mitigation and monitoring measures, natural avoidance responses, and that piles will be installed during lower density months. Therefore, NMFS is authorizing Level A harassment to sei and gray seals equal to the exposure estimates (three sei whale, five gray seal). However, for other species, in order to appropriately consider the likelihood of aversion in the closer vicinity of the source and the likely effectiveness of the mitigation measures, we estimate that 20 percent of the calculated exposure estimates could occur (rounded to the nearest whole number), which is equal to 2 fin whale exposures, 13 minke whale exposures, 65 harbor porpoise exposures, and 7 harbor seal exposures. This adjustment is consistent with the adjustment used in the Gulf of Mexico incidental take regulations (86 FR 5354, January 19, 2021), which was informed by the associated relative risk assessment framework developed by an expert working group to support the analyses and findings in those regulations. The risk assessment framework referenced Ellison *et al.* (2016), in which modeled scenarios using animal movement models were used to evaluate predicted PTS in which no aversion was assumed relative to scenarios where reasonable assumptions were made about aversion, in line with historical response probability assumptions and that existing scientific literature suggest are appropriate. Scenarios where no aversion probability was used overestimated the potential for high levels of exposure required for PTS by about five times. Accordingly, total modeled injurious exposures calculated without accounting for behavioral aversion were multiplied by 0.2 as part of the Expert Working Group (EWG) risk analysis for the Gulf of Mexico, and we

have determined that this adjustment is similarly appropriate for this analysis.

Comment 6: The Commission recommended that NMFS include in the final rule a small number of Level A harassment takes of harbor porpoises incidental to cable landfall construction, specifically installation and removal of casing pipes.

Response: NMFS concurs with the Commission's general recommendation and notes the Commission did not recommend a number of takes by Level A harassment. NMFS has added a small number of Level A harassment takes of harbor porpoises during pneumatic hammering installation and removal of casing pipes should this landfall construction activity occur (rather than installation of a cofferdam). Since publication of the proposed rule, Revolution Wind determined that it will be impracticable to monitor a 4-km shutdown zone. Based on NOAA shipboard observations of harbor porpoises used in habitat-based density modeling conducted by Roberts *et al.* (2016, 2023), the detection probability for harbor porpoises drops off substantially in the 750–1,000 m range when sea states are a Beaufort Sea State of 2 or less. Therefore, Revolution concluded that 750 m is the maximum practicable extent within which they could effectively monitor for harbor porpoise during casing pipe installation and removal. NMFS has adjusted the shutdown zone in this final rule to 750 m. Given this new information, similar to our approach to responding to Comments 3 and 5, we reconsidered the available information on this species' habitat distribution, the distance to the Level A harassment threshold, and the potential for harbor porpoise, a small, fast moving species that can be difficult to see, to be exposed to sound energy levels necessary to induce PTS. As described in the proposed rule, modeling results estimate that a harbor porpoise would have to remain at approximately 4 km for 3 hours of hammering per day to experience PTS (or some lesser duration if the animal approaches closer). Harbor porpoises are one of the few marine mammals known to occur regularly in Narragansett Bay (*e.g.*, Kenney and Vigness-Raposa, 2010) and are most frequently observed in winter and spring during which casing pipe installation and removal would occur (Q4 2023–Q1 2024). The potential temporal and spatial overlap of harbor porpoise occurrence with the PTS Level A harassment acoustic footprint resulting from pneumatic hammering, the size of the PTS Level A harassment zone (3,950 m), and the cryptic nature of harbor porpoises (particularly at a

distance) support authorization of Level A harassment. Revolution Wind expects that it will require 8 days of pneumatic hammering to install the casing pipes. Because Revolution Wind has not specified exactly which 8 days in Q4 2023–Q1 2024 casing pipe installation would occur, it is possible that they would complete this activity in December or January, when harbor porpoise densities near the landfall construction site are an order of magnitude higher than in the other months in which the species consistently utilizes habitat in/near Narragansett Bay (March–May), and the potential for acoustic impacts from pneumatic hammering is highest. Given that there are no modeled results for takes by Level A harassment, NMFS conservatively assumes that one group (group size = 2.7 rounded to 3; Kraus *et al.*, 2016) may be taken by Level A harassment per day of pneumatic hammering ($n=8$). Therefore, NMFS is authorizing 24 takes by Level A harassment zone of harbor porpoises incidental to casing pipe installation.

Comment 7: The Commission is concerned the number of take of common dolphin proposed to be authorized (3,913 common dolphins across all activities) is an underestimate considering the size of the Level B harassment zones, the potential number of days of activities, and the known presence of delphinids in the area, and recommended that NMFS ensure that the number of Level B harassment takes of common dolphins is sufficient for impact driving of monopiles or other activities (landfall construction, HRG surveys, and UXO/MEC detonations) and increase the total number, as necessary, for the final rule. The Commission notes that other wind-energy operators have had to revise their HRG survey incidental harassment authorization mid-authorization and in some cases, twice when the authorized number of takes had been met (*e.g.*, 86 FR 13695, March 10, 2021), thus, there is the potential for this to occur for Revolution Wind given the frequency of common dolphin occurrence in the Project Area. The Commission notes 4,644 common dolphins were observed in the lease areas during combined HRG surveys (*i.e.*, site assessment surveys) for Revolution Wind and two other wind projects from September 2019 to September 2020 (Smultea Environmental Sciences, LLC, 2020).

Response: NMFS acknowledges the importance of accurate take estimates. NMFS notes that the IHA referenced by the Commission that required multiple revisions to increase the authorized take numbers for delphinids, including

common dolphins, was associated with HRG surveys occurring off the coast of Virginia and therefore, is not representative of occurrence patterns in the Project Area. Regarding the cited monitoring results from Smultea Environmental Sciences, LLC (Smultea) (2020) from Orsted Wind Power, LLC's HRG surveys (84 FR 52464, October 2, 2019), NMFS also notes that this survey covered 103,186 km while Revolution Wind only plans to survey 29 percent of that distance (30,345 km). However, the common dolphin sighting data in the Smultea (2020) monitoring report can inform estimates of take within the Project Area, given that the area surveyed included the Revolution Wind and surrounding leases.

Importantly, the common dolphin take numbers Revolution Wind requested and NMFS proposed for authorization were based on the best scientific information available and a conservative methodology, including that the number of takes was the largest estimate among multiple take estimation methods (*i.e.*, modeled density-based exposures, PSO data-derived estimates, and published group size value) and the data used to estimate take incidental to cofferdam installation were collected outside Narragansett Bay, where common dolphin occur more frequently.

NMFS disagrees that authorization of additional take of common dolphins incidental for landfall construction activities and WTG foundation installation is warranted. While common dolphins are known to occur near the landfall construction location in Narragansett Bay, the frequency of occurrence is expected to be significantly less than that in open water; thus, the number of takes is conservative as it is based on oceanic PSO data. In addition, common dolphins are rarely sighted in Narragansett Bay in the winter months (Kenney and Vigness-Raposa, 2010) when cable landfall construction will take place. The proposed common dolphin density-based Level B harassment take estimate for impact foundation installation incorporated the maximum monthly average density, which occurs in December. However, the final rule specifies that Revolution Wind must not plan to install foundations in December and may only do so with NMFS-explicit approval. Thus the take estimate for landfall construction activities is conservative.

NMFS agrees with the Commission's recommendation to increase the number of Level B harassment take of common dolphins incidental to UXO/MEC detonation given the prevalence of the species in southern New England;

however, the Commission did not provide any suggested number of takes NMFS should authorize and, as described previously, based their recommendation partially on PSO sighting data that include observations of common dolphins over a much larger spatial scale than the Project Area. While there is no new information to consider, similar to our approach to responding to Comments 3, 5 and 6, we reconsidered the available information on this species' monthly densities, which NMFS considers the best available science for this purpose, and the currently unpredictable timing of UXO/MEC detonations. Given the timing of UXO/MEC detonations is unknown, it's equally possible that detonations could occur when common dolphin densities are highest or lowest in the Project Area, although take estimation did conservatively incorporate the maximum average monthly common dolphin density from May–December in the Lease Area (November) and export cable route (September). In addition, Revolution Wind assumed six and seven detonations would occur in the export cable corridor and Lease Area, respectively. However, it is possible that more than the estimated number of UXO/MECs could be located and detonated in either area. The maximum average monthly density used to estimate take in the export cable corridor (0.0389 individuals/km²) is approximately half of the Lease Area maximum average monthly density. (0.0762 individuals/km²). Thus, should more than seven detonations (if required) occur in the Lease Area, the estimated Level B harassment take incidental to UXO/MEC detonation could be underestimated. Based on these factors, NMFS assumed that one group (group size = 34.9, rounded to 35) could be taken by Level B harassment incidental to approximately half (n=7) of all UXO/MEC detonations, and is, therefore, authorizing a total of 632 common dolphin Level B harassment takes due to UXO/MEC detonations; a change from the proposed rule of 211 as the corrected number of Level B harassment takes of common dolphin which Revolution Wind requested was 387 and the addition of 245 takes by Level B harassment as a result of a comment from the Commission.

Please note that Revolution Wind is required to implement the As Low as Reasonably Practicable (ALARP) process, which indicates that detonation would occur as a last resort after all other methods (*e.g.*, lift-and-shift) are exhausted.

NMFS agrees with the Commission's recommendation to increase take of common dolphins incidental to HRG surveys and is authorizing an additional number of common dolphin takes based on data in the PSO monitoring report cited in their comment, which NMFS considers to be the best available science for this purpose. The total number of common dolphins sighted by PSOs is highly variable, depending on the survey timing (which may align more or less with peaks in expected common dolphin occurrence), the number of kilometers surveyed, and survey conditions, among other factors. As described above, Revolution Wind anticipates that they may conduct HRG surveys at any time of year throughout construction and non-construction years. Given common dolphins are one of the most frequently sighted species during HRG surveys (as reported by PSOs in the monitoring reports cited here) and the number of dolphins sighted is highly variable and dependent on multiple influencing factors (*e.g.*, time of year), NMFS is conservatively authorizing 4,457 common dolphin Level B harassment takes incidental to HRG surveys during the year of construction, which is equivalent to the number of common dolphins taken by Level B harassment during the HRG surveys the Commission refers to in their comment (Smultea Environmental Sciences, LLC, 2020). This is an 89 percent increase from the 2,354 common dolphin Level B harassment takes proposed for authorization (87 FR 79072, December 23, 2022). Accordingly, NMFS is authorizing 1,094 takes per year (89 percent increase from 579 per year, as presented in the proposed rule) of common dolphins, by Level B harassment, incidental to HRG surveys for each of the 4 years following construction (4,376 total in the years following construction).

Comment 8: The Commission recommended that NMFS determine if the 2017 Department of the Navy's (2017) group size estimates are more appropriate or reflective of the expected group size estimates for the Project than those used in the proposed rule (see Borcuk *et al.*, 2017). If so, the Commission suggested the take numbers be amended in the final rule for all of Revolution Wind's activities.

Response: We appreciate the Commission's suggestion to review the 2017 Department of the Navy's (2017) group size estimates to see if they are more applicable for the Project (see Borcuk *et al.*, 2017). Based on our review, we disagree that the Navy's group size estimates are the most

applicable in this case. First, the Navy only provides group size estimates for odontocetes, which means we would still need to find applicable estimates for non-odontocete species found in the Atlantic Ocean. Second, the group sizes provided in Kraus *et al.* (2016) (used for 10 species in our analysis) are derived from data gathered specifically in the Massachusetts and Rhode Island/Massachusetts Wind Energy Areas (MA and RI/MA WEAs), where Revolution Wind's Project will occur. The group sizes in the Navy (2017) report are based on data collected more broadly across the entire East Coast of the United States and Canada, including the Gulf of Mexico, Sargasso Sea, Labrador Sea, and Labrador Basin. Furthermore, Atlantic Marine Assessment Program for Protected Species (AMAPPS) data (Palka *et al.*, 2017; which was used as a group size reference for six species in our analyses) uses more recent information, as demonstrated in the 2010–2021 annual reports found on NMFS' web page, (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected>). The Navy (2017) group sizes are based on data from 1990 through 2013 (see Table 3–1 in the report). Lastly, based on monitoring reports received from PSOs in the field (and found on NMFS' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable#expired-authorizations>), the group sizes observed align more with estimates found in Kraus *et al.* (2016) and AMAPPS (Palka *et al.*, 2017). For these reasons, the group sizes proposed by Revolution Wind, any adjustments using Kraus *et al.* (2016) or AMAPPS data, and any group sizes used in the proposed and final rules are based on the best available scientific information.

Comment 9: The Commission disagrees with NMFS that the potential for non-auditory injury and mortality during UXO/MEC detonations are considered *de minimis*. They stated that although non-auditory injury and mortality could be unlikely, these outcomes are not *de minimis* because these assumptions were based off Bellmann *et al.* (2020) and Bellmann (2021) and their reports of bubble curtain effectiveness, which are based on information obtained from mitigating UXO/MECs in European waters using a big bubble curtain. The Commission went further to state that these results from Bellmann are only potentially possible if the single or double bubble

curtain was optimized for the environmental conditions and that these results are specific to European charges, which may not be representative of charges in the United States as charges in Europe have been degrading in the water for approximately 75 years, which compromises the integrity of the trinitrotoluene (TNT)-equivalent material. Additionally, the charge weights described in Bellmann (2021) are much smaller than those described for Revolution Wind (*i.e.*, 100 grams (g), 5 kilograms (kg), 10 kg compared to 454 kg). The Commission also adds that the shockwave from the UXO/MEC detonations may displace or disrupt the bubble curtains due to the speed the shockwave travels (*i.e.*, supersonic). Because of these reasons, the Commission recommended that NMFS re-estimate the distances to threshold and the mitigation and monitoring zones for mortality, Level A harassment, and Level B harassment based on 0 dB of sound attenuation.

The Commission also recommended that NMFS estimate and authorize Level B harassment behavior takes of marine mammals, in addition to takes from temporary threshold shift (TTS), for UXO/MEC detonations in the final rule. Finally, the Commission recommended that, because of the reasons already explained regarding attenuating UXO/MEC detonations, NMFS should require that Revolution Wind utilize a double big bubble curtain (DBBC) during all detonations and that NMFS not allow Revolution Wind to detonate UXOs/MECs when currents are moving faster than 2 knots (kn; 2.3 miles per hour (mph)).

Response: NMFS appreciates the Commission's recognition that European waters offer a different environment than the Atlantic Ocean and that the conditions and size of explosives potentially encountered in the Revolution Wind Project Area. Bellmann (2021) summarized findings from Bellmann *et al.* (2021) that showed use of a single big bubble curtain during UXO/MEC detonation reduced noise levels by 11 dB for broadband sound exposure levels and up to 18 dB for peak sound pressure (L_{pk}). While NMFS agrees with the Commission's comment that big bubble curtains (BBCs) attenuate high-frequency (HF) sound (<1 kHz) more efficiently than low-frequency (LF) sound (Bellmann *et al.*, 2020) that corresponds to most of the UXO/MEC energy, the broadband attenuation is expected to be similar, if the bubble curtain radius is large enough to avoid nearfield effects of the explosive detonations. While it is true that theoretical explosive spectra are flat

at low frequencies and decay at high-frequencies, there remains significant energy at frequencies at which bubble curtains have been shown to be effective (Bellmann *et al.*, 2020). A recent study of UXO/MEC detonations in the North Sea (Robinson *et al.*, 2022) showed that measured spectra at 5.1 km had the majority of its energy between 32 and 250 Hz, in this range, the insertion loss data from Bellman (2021) has a minimum attenuation of approximately 16.8 dB in the 50-hertz (Hz) band and is greater than 20 dB for all other bands. Further, Verfuss *et al.* (2019) summarize the effectiveness of bubble curtains on UXO/MEC detonations beyond those sizes considered in Bellman *et al.* (2021) which, while variable, provide support for the 10-dB broadband assumption when bubble curtains are deployed correctly (*i.e.*, with a sufficiently large diameter to suppress the flow of displaced water). Therefore, the choice of 10 dB as a broadband attenuation for UXO/MEC detonations in our analysis is based on the best scientific information available and thus is appropriate.

In addressing the Commission's additional comments regarding mitigating pile driving and UXO/MEC detonations and the efficacy, the physical principles of inserting an impedance change between the source and farther receivers is the same whether the source is an explosive or a pile. It is important, however, that the bubble curtain be placed outside of the region where the explosive causes nonlinear changes in the medium. While we do agree that "deployment" and "efficacy" are not synonymous terms, there will be a deployed bubble curtain on each of the piles driven for the project so an understanding of bubble curtain deployment strategies, maintenance, and use will be understood by the operations team. As above, the mechanism of sound attenuation, while frequency dependent, does not change for the source as long as the bubble curtain is deployed at distance where the acoustics is linear. For UXOs/MECs, the distances to thresholds for different sized charges likely to be encountered were calculated by JASCO assuming the sources were full strength and not degraded due to time. While the Commission has also accurately stated that the bubble curtain could be displaced due to the supersonic shock wave produced by the detonation event, we acknowledge that this would require the bubble curtain to be placed in the area outside of the non-linear zone.

NMFS is requiring Revolution Wind to meet the noise levels modeled assuming 10-dB attenuation, which

must be verified by SFV and, as recommended by the Commission, is requiring Revolution Wind deploy a double big bubble curtain (DBBC) during all UXO/MEC detonations. Further, we are requiring that the bubble curtain be placed at a distance such that the nozzle hose remains undamaged. Given the best available science suggests 10-dB attenuation is achievable, the additional information provided above by JASCO, the requirement to meet the noise levels modeled assuming 10 dB, and the requirement to use a double big bubble curtain, as well as the extensive monitoring requirements associated with the clearance requirements (including aerial surveys if the clearance zone is greater than 5 km), NMFS has not adjusted any distances to thresholds or take estimates assuming no noise attenuation. At this time, NMFS is not requiring UXO/MEC detonation be limited to times when current speed is 2 kn (2.3 mph) or less but, as described above, is requiring Revolution Wind to meet the noise levels modeled. Should SFV identify that noise levels are not being met, NMFS will consider the current conditions during detonation and determine if such a measure is necessary to meet the noise levels modeled assuming 10-dB attenuation. Nonetheless, regarding the Commission's comment about use of the term "*de minimis*" to describe the likelihood of non-auditory injury or mortality, we concur that "unlikely" is a better descriptor and have changed it in this final rule where appropriate.

NMFS agrees with the Commission that there is potential for behavioral disturbance from a single detonation per day and this impact is accounted for with the Level B harassment takes authorized from UXO/MEC detonations. The current take estimation framework allows for the consideration of animals exhibiting behavioral disturbance during single explosions as they are counted as "taken by Level B harassment" if they are exposed above the TTS threshold, which is 5-dB higher than the explosive behavioral harassment threshold. The behavioral threshold for underwater detonations (*i.e.*, 5 dB less than the TTS thresholds for each functional hearing group) that the Commission identifies in its comment is only applicable to multiple detonations per day. We acknowledge in our analysis that individuals exposed above the TTS threshold may also be harassed by behavioral disruption and those potential impacts are considered in the negligible impact determination. NMFS is not aware of evidence to support the assertion that animals will

have behavioral responses that would qualify as take to temporally and spatially isolated explosions at received levels below the TTS threshold. However, if any such responses were to occur, they would be expected to be few and to result from exposure to the somewhat higher received levels bounded by the TTS thresholds and would, thereby, be accounted for in the take estimates. The derivation of the explosive injury criteria is provided in the 2017 technical report titled "Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)."

In the final rule, we have clarified that (1) Revolution Wind will be limited to detonating one UXO/MEC per day, and (2) that the TTS thresholds provided in Table 5 are used to estimate the potential for Level B (behavioral) harassment. In both the proposed and this final rule, NMFS applied the TTS thresholds to determine the received level at which Level B harassment (which includes both behavioral responses and TTS) may occur. Hence, no adjustments to take estimates are necessary.

Comment 10: Citing the dire situation of North Atlantic right whales, the commenter stated that NMFS should clearly describe in the regulations or LOA for wind projects that the activities cannot result in any Level A harassment, serious injury, or mortality of North Atlantic right whales.

Response: The proposed rule clearly states that no take of North Atlantic right whales by Level A harassment, mortality, or serious injury was requested or proposed for authorization (see the Estimated Take and Negligible Impact Analysis and Determination sections in the proposed rule) and those statements are also included in this final rule. In this final rule, for example, Tables 27 and 28 show that only Level B harassment is authorized for North Atlantic right whales, and the North Atlantic right whale sub-section in the Negligible Impact Analysis and Determination section also states that no take of North Atlantic right whale by Level A harassment, mortality, or serious injury is anticipated or authorized and any take that is authorized is limited to Level B harassment only.

Mitigation

Comment 11: Commenters recommended that NMFS require Revolution Wind to implement the best commercially available combined noise attenuation system (NAS) technology to achieve the greatest level of noise reduction and attenuation possible for

pile driving. One commenter recommended that NMFS require, at a minimum, a 10-dB reduction in sound exposure level (SEL), but other commenters recommended that NMFS require a minimum of 15-dB or greater reductions, citing successes described in Bellman *et al.* (2020 and 2022) and recommended "state-of-the-art" methods using a combination of two NAS systems simultaneously. A commenter further stated that NMFS should require field measurements to be taken throughout the construction process, including on the first pile installed, to ensure compliance with noise reduction requirements. A commenter also suggested that NMFS require Revolution Wind to use HRG acoustic sources at the lowest practicable source levels needed to meet the objectives of the site characterization surveys.

Response: NMFS agrees that underwater noise levels should be reduced to the greatest degree practicable to reduce impacts on marine mammals as required by the MMPA. As described in both the proposed and final rule, NMFS has included requirements for sound attenuation methods that successfully (evidenced by required sound field verification measurements) reduce real-world noise levels produced by impact pile driving of foundation installation to, at a minimum, the levels provided by JASCO modeled assuming 10 dB reduction, as analyzed in the proposed rule. Preliminary sound measurements from South Fork Wind, another Orsted project, indicate that with multiple NAS systems, measured sound levels during impact driving foundation piles using a 4,000 kJ hammer are below those modeled assuming a 10-dB reduction and suggest, in fact, that two systems may sometimes be necessary to reach the targeted 10-dB reductions. While NMFS is requiring that Revolution Wind reduce sound levels to match the model outputs analyzed (assuming a reduction of 10 dB), we are not requiring greater reduction as it is currently unclear (based on measurements to date) whether greater reductions are consistently practicable for these activities, even if multiple NAS systems are used.

In response to the recommendation by the commenters for NMFS to confirm that a 10-dB reduction is achieved, NMFS clarifies that, because no unattenuated piles would be driven, there is no way to confirm a 10-dB reduction; rather, in-situ SFV measurements will be required to confirm that sound levels are at or

below those modeled assuming a 10-dB reduction.

Regarding the recommendation that Revolution Wind should utilize its HRG acoustic sources at the lowest practicable source level to meet the survey objective, NMFS agrees with this suggestion and has incorporated this requirement into the final rule.

Comment 12: To minimize the risk of vessel strikes for all whales, especially in recognition of the imperiled state of North Atlantic right whales, commenters recommended that NMFS require a mandatory 10-kn (11.5 mph) speed restriction for all project vessels (including PSO survey vessels) at all times, except for reasons of safety, and in all places except in limited circumstances where the best available scientific information demonstrates that whales do not occur in the area. Another commenter made the same recommendation but suggested no exceptions. Alternatively, commenters suggest that project proponents could work with NMFS to develop an “Adaptive Plan” that modifies vessel speed restrictions if the monitoring methods informing the Adaptive Plan are proven as effective when for vessels traveling 10 kn (11.5 mph) or less and must follow a scientific study design. One commenter suggests that if the Adaptive Plan is scientifically proven to be equally or more effective than a 10-kn speed restriction, that the Adaptive Plan could be used as an alternative to the 10-kn speed restriction. Commenters also recommend that NMFS (1) require all offshore personnel to be trained to identify North Atlantic right whales and other large whales, (2) that all vessels maintain a 500 m separation distance from North Atlantic right whale, 100 m for other large whale species while also maintaining a vigilant watch for North Atlantic right whale and other large whale species, (3) that NMFS require vessels to slow down or maneuver their vessels appropriately to avoid a potential interaction with a North Atlantic right whale and other large whale species, and (4) that NMFS require vessels to maintain a separation distance from North Atlantic right whales at all times.

Response: NMFS acknowledges that vessel strikes pose a risk to all large whales, including North Atlantic right whales. Based on the density information provided by Roberts *et al.* (2023), many large whale species are less frequently found within the Revolution Wind Project Area during the months when foundation installation, which requires the use of multiple vessels, would occur (*i.e.*, May through November and possibly

December, if approved by NMFS). Furthermore, while we acknowledge that North Atlantic right whales can be found year round in the Project Area, NMFS, as described in the proposed rule and included in this final rule, is requiring Revolution Wind to reduce speeds to 10 kn (11.5 mph) or less in circumstances when North Atlantic right whales are known to be present or more likely to be in the area, which include, but are not limited to, all Slow Zones (Dynamic Management Area or acoustic Slow Zone), when traveling between ports in New Jersey, New York, Maryland, or Virginia from November 1–April 30, and if a North Atlantic right whale is detected visually or acoustically at any distance or reported within 10 km. Vessels are also required to slow and maintain separation distances if other species of large whales are observed. Additionally, aside from any requirements of this rule, Revolution Wind is required to comply with all spatial and temporal speed restrictions outlined in existing regulations. Together, these speed requirements align with the commenters’ recommendations.

The required mitigation measures, all of which were included in the proposed rule and are now required in the final rule, can be found in Section 217.274(b) of the regulatory text. For the final rule, NMFS has also included a requirement that all vessels be equipped with automatic identification system (AIS) to facilitate compliance checks with the speed limit requirements. At least 180 days prior to the start of vessel operations commencing, Revolution Wind must submit both a Vessel Strike Avoidance Plan, including plans for conducting PAM in the transit corridors should Revolution Wind determine they wish to travel over 10 kn (11.5 mph) in the transit corridors, to NMFS for review and approval.

While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Revolution Wind’s activity and have determined that based on the required mitigation measures specific to vessel strike avoidance included in the final rule, the potential for vessel strike is so low as to be discountable and thus, no vessel strikes are expected or authorized to occur. These measures also ensure the least practicable adverse impact on species or stocks and their habitat. Therefore, we are not requiring project-related vessels to travel 10 kn (11.5 mph) or less at all times.

Comment 13: Commenters recommended that NMFS should prohibit pile driving during periods of

highest risk for North Atlantic right whales, which they defined as times of the highest relative density of animals during foraging and migration, and times where cow-calf pairs, pregnant females, surface active groups (that are foraging or socializing), or aggregations of three or more whales, are not expected to be present. Citing multiple information sources, commenters further specifically recommended the seasonal restriction for pile driving be expanded to November 1 through April 30 to reflect the period of highest detections of vocal activity, sightings, and abundance estimates of North Atlantic right whales. A commenter recommends prohibiting pile driving during seasons when protected species are known to be present or migrating in the Project Area, in addition to any dynamic restrictions due to the presence of North Atlantic right whale or other endangered species.

Response: NMFS has restricted foundation installation pile driving from January through April which represent the times of year when North Atlantic right whales are most likely to be in the Project Area. We recognize that the density of whales begins to elevate in December; however, it is not until January when density greatly increases. Revolution Wind has indicated that to complete the project, pile driving in December will be avoided as much as possible but may be required. In this final rule, NMFS has included an additional measure wherein impact pile driving must be avoided to the maximum extent practicable in December; however, with prior approval by NMFS, it may occur if necessary to complete the project. In any time of year when foundation installation is occurring, a visual or acoustic detection of a North Atlantic right whale at any distance triggers a pile driving delay or shutdown. We also reiterate that Revolution Wind is required to implement a larger minimum visibility zone in December (4.4 km (2.7 mi)) as compared to other project months (2.3 km), reflecting the results of JASCO’s underwater sound propagation modeling. With the application of these enhanced mitigation and monitoring measures in December, impacts to the North Atlantic right whale will be further reduced, if any are encountered when transiting through the Project Area.

Regarding further restrictions on pile driving in the month of November, as noted in the comments and supporting information and acknowledged by NMFS in both the proposed and final rules, North Atlantic right whale distribution is shifting due to climate

change and other factors, and they are now present year round in the vicinity of the project (*e.g.*, Quintana-Rizzo *et al.*, 2021), with observations of feeding behavior and some detections of mothers with calves. However, as shown in Roberts *et al.* (2023), which is considered the best available science regarding marine mammal densities in the Atlantic Ocean, it is not until January that densities begin to significantly increase. Further, North Atlantic right whales are not likely to be engaged in extensive feeding behaviors in the Project Area, in November, relative to the extent of foraging in habitat to the east (*e.g.*, in and around Nantucket Shoals). For these reasons and given the inclusion of December in the pile driving temporal restrictions, except with NMFS prior approval, NMFS finds that further expansion of the pile driving restrictions (beyond December–April) is unwarranted.

Inasmuch as commenters may be suggesting prohibiting pile driving when any protected species are present, it would not be practicable to implement as there is no time of year when some species of marine mammals are not present. The measures prescribed in this final rule ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 14: Commenters recommended that NMFS increase the size of the clearance and shutdown zones for HRG surveys, require a delay in the start and resumption of HRG surveys and pile driving if a large whale is visually or acoustically detected in the clearance and shutdown zones, require soft start for pile driving and ramp up for HRG surveys, and require PAM during HRG surveys. In addition, a commenter acknowledges the purpose of an exemption from shutdown for safety reasons for pile driving but recommends that, if this exemption occurs, Revolution Wind must immediately notify NMFS and provide justification for using the exemption. Additionally, a commenter stated that a summary of the frequency of these exceptions must be made publicly available.

Response: NMFS disagrees with the commenters' recommendation to increase HRG survey clearance and shutdown zone sizes, and the commenters' do not provide additional scientific information for NMFS to consider to support their recommendation. As described in the proposed rule and this final rule, the required 500-m shutdown zone for North Atlantic right whales exceeds the modeled distance to the largest 160-dB Level B harassment isopleth (141 m

during sparker use) by a large margin, minimizing the likelihood that they will be harassed in any manner during this activity. For other Endangered Species Act (ESA)-listed species (*e.g.*, fin and sei whales), the NMFS Greater Atlantic Regional Fisheries Office (GARFO) 2021 Offshore Wind Site Assessment Survey Programmatic ESA consultation (see <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic>) determined that a 100-m shutdown zone is sufficient to minimize exposure to noise that could be disturbing. Accordingly, NMFS has adopted this shutdown zone size for all baleen whale species, other than the North Atlantic right whale.

NMFS notes that the recommended requirement that any detection of a North Atlantic right whale (visually, and acoustically for pile driving) in the associated clearance zone during the clearance period would trigger a delay to the onset of HRG surveys and pile driving was included in the proposed rule and is included in this final rule. Similarly, NMFS notes that the recommended requirement that any detection of a North Atlantic right whale (visually, or acoustically in the associated "exclusion" zone) while pile driving is occurring would trigger a shutdown of pile driving (with the noted safety exception) was included in the proposed rule and is included in this final rule. In this final rule, NMFS has also added the requirement that shutdown of pile driving must occur if a North Atlantic right whale is visually detected at any distance or acoustically detected at any distance within the PAM monitoring zone.

Regarding the resumption of pile driving and HRG surveys following a shutdown, NMFS notes that the following requirements were included in the proposed rule and in this final rule: (1) PSOs must monitor clearance zones prior to impact pile driving or use of survey equipment starting, (2) impact pile driving and survey activities must begin only when the Lead PSO confirms that no North Atlantic right whales or other marine mammal species have been detected in the applicable clearance zones, and the PAM operator confirms no detection of North Atlantic right whales (for pile driving), and (3) soft-start to pile driving or ramp-up to HRG surveys are required.

The commenters do not provide additional scientific information for NMFS to consider to support their recommendation to require PAM during HRG surveys. NMFS disagrees that this measure is warranted because it is not expected to be effective for use in

detecting the species of concern given the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hz frequency range. Source levels range from about 140 to 195 dB re 1 μ Pa at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.*, 2012; McKenna *et al.*, 2012; Rolland *et al.*, 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low frequency and typically masks signals in the same range. Experienced PAM operators (Thode *et al.*, 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range but not baleen whales due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

Further, there are several additional reasons why we do not agree that use of PAM is warranted for HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances (*e.g.*, foundation installation), its utility in further reducing impacts during HRG survey activities is limited. For this activity, the area expected to be ensounded above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low (particularly because of flow noise masking vocalizations). Together, these factors support the limited value of PAM for use in reducing take for activities/sources with smaller zones. Also, PAM is only capable of detecting animals that are actively vocalizing,

while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of HRG surveys authorized in this final rulemaking are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for North Atlantic right whales and other low frequency cetaceans, species for which PAM has limited efficacy during this specific activity), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to effect the least practicable adverse impact on the affected species or stocks and their habitat during HRG surveys.

Regarding the recommendation that Revolution Wind should be required to notify NMFS in the event that mitigation actions are not undertaken based on specific exceptions (e.g., unable to shutdown pile driving for safety reasons), NMFS notes that both the proposed and final rules require weekly, monthly, and annual reports where Revolution Wind must provide reasons why mitigation actions could not occur (including for this exception). We acknowledge the importance of transparency in the reporting process and plan to make all final annual and 5-year marine mammal monitoring reports and final SFV report on our website. However, NMFS will not be making the weekly or monthly reports available to the public given the amount of total reports that would be obtained over a 5-year period.

NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Comment 15: Commenters recommended that NMFS require pile-driving clearance and shutdown zones for large whales (other than North Atlantic right whale) that are large enough to avoid all take by Level A harassment and minimize Level B harassment to the most practicable extent.

Response: The commenters do not provide additional scientific

information for NMFS to consider to support their recommendation to expand clearance and shutdown zones to effect the least practicable adverse impact on marine mammals, particularly large whales, excluding the North Atlantic right whale. The required shutdown and clearance zones (equally sized) for large whales (other than North Atlantic right whale) are based on the largest exposure range calculated for any mysticete, other than humpback whales, that represents the distance to the Level A harassment (isopleth for the low frequency hearing group, rounded up to the nearest hundred for PSO clarity. Required monitoring and mitigation for these zones will minimize Level A harassment and Level B harassment to the extent practicable and avoid most Level A harassment of large whales (note that for all but minke whales ($n = 21$), other species of large whales have 9 or fewer takes by Level A harassment across all 5 years of the rule). Further enlargement of these zones could interrupt and delay the project such that a substantially higher number of days would be needed to complete the construction activities, which would incur additional costs but, importantly, also potentially increase the number of days that marine mammals are exposed to the disturbance. Accordingly, NMFS has determined that enlargement of these zones is not warranted, and that the existing required clearance and shutdown zones support a suite of measures that will effect the least practicable adverse impact on other large whales.

Comment 16: Commenters recommended that NMFS require clearance and shutdown zones for North Atlantic right whales specifically, including (1) a minimum of 5,000 m (3.1 mi) for the visual clearance, acoustic clearance, and shutdown zones in all directions from the driven pile location; and (2) an acoustic shutdown zone that would extend at least 2,000 m (1.2 mi) in all directions from the driven pile location.

Response: The commenters do not provide additional scientific information for NMFS to consider to support their recommendation to expand clearance and shutdown zones for impact pile driving to effect the least practicable adverse impact on North Atlantic right whales. The proposed rule and this final rule require impact pile driving to be delayed or shutdown if a North Atlantic right whale is visually or acoustically detected at any distance. Given NMFS neither anticipates nor authorizes any take by Level A harassment of North Atlantic right

whales, NMFS concludes that these measures will effect the least practicable adverse impact on the species. Delaying the project due to overly enlarged zone sizes would result in longer construction time frames, prolonging the time periods over which marine mammals may be exposed to construction-related stressors. Accordingly, NMFS has determined that enlargement of these zones is not warranted and that the existing required clearance and shutdown zones support a suite of measures that will effect the least practicable adverse impact on North Atlantic right whales and other affected species.

Comment 17: For all large whale species, commenters recommended that NMFS require real-time PAM during pile driving to monitor the acoustic clearance and acoustic shutdown zones, and must assume a detection range of at least 10 km. They stated that this monitoring must be undertaken from a vessel other than the pile driving vessel or from a stationary unit to avoid masking of the hydrophone from the pile driving vessel or other development-related noise.

Response: As described in the proposed rule, NMFS is requiring the use of PAM to monitor 10 km zones around the piles and that the systems be capable of detecting marine mammals during pile driving within this zone. However, NMFS acknowledges that this could be made clearer and has modified Table 29 to clearly specify this 10-km PAM monitoring zone. Revolution Wind is required to submit a PAM Plan to NMFS for approval at least 180 days prior to the planned impact pile driving start date. NMFS will not approve a Plan where hydrophones used for PAM would be deployed from the pile driving vessel as this would result in hydrophones inside the bubble curtains, which would clearly be ineffective for monitoring; therefore, there is no need to explicitly state in this rule that this would not be allowed. Further, Revolution Wind may launch PAM drones from shore; hence, NMFS is not requiring that Revolution Wind deploy any monitoring systems from a vessel.

Comment 18: Commenters recommended that NMFS should restrict pile driving at night and during periods of low visibility to protect all large whale species. This would include no pile driving being allowed to begin after 1.5 hours before civil sunset or during times where the visual clearance zone and shutdown zone (called the "exclusion zone" by the commenter) cannot be visually monitored, as determined by the Lead PSO.

If nighttime pile driving is to be allowed, the commenters recommended that NMFS require that pile driving be initiated no later than 1.5 hours prior to civil sunset at the latest in order to maximize monitoring capabilities during hours of optimal visibility/daylight. The commenters also recommended that impact pile driving started at least 1.5 hours prior to civil sunset during good visibility conditions can then continue after dark, as necessary providing the best available infrared technologies are used to support visual monitoring of the clearance and exclusion zones during periods of darkness.

Commenters caveat this by stating that NMFS should only allow pile driving to continue after dark if the activity began during daylight hours and must continue for human safety or due to installation feasibility (*i.e.*, instability or pile refusal) but only if required nighttime monitoring protocols are followed.

Commenters suggested that if pile driving must continue after dark due to safety reasons, Revolution Wind should be required to notify NMFS with these reasons and an explanation for exemption. Additionally, a commenter states that a summary of the frequency of these exceptions must be made publicly available to ensure that these are indeed exceptions, rather than the norm, for the project.

Response: NMFS acknowledges the limitations inherent in visual detection of marine mammals at night and that these could potentially result in some limited number of marine mammals being exposed to higher levels of sound for a longer duration before a shutdown was implemented. However, there are offsetting benefits to completing the pile driving in a shorter total amount of time, in that some number of marine mammals (those that might intersect the much larger Level B harassment zone) would be exposed to fewer overall days of pile driving noise, and potentially a smaller magnitude or severity of behavioral disturbance as a result given repeated exposures would be minimized. Further, Revolution Wind submitted a final draft Alternative Monitoring Plan (AMP) on August 4, 2023. NMFS will review the AMP to determine sufficiency in maximizing nighttime detection to support the required mitigation measures. Should NMFS approve the AMP, nighttime pile driving may occur given Revolution Wind adherence to the AMP.

NMFS disagrees with the recommendation to require Revolution Wind to notify NMFS each time that pile(s) must be finished after dark due

to safety and/or stability concerns and note that the rule already requires weekly reports during foundation installation, which must contain information that would inform on how long impact pile driving occurred and if it was necessary for this activity to occur during hours of darkness (*i.e.*, information that would document the daily start and stop of all pile-driving activities). These weekly reports would be combined into monthly and annual reports. We do not plan to make the weekly or monthly reports publicly available, due to the number or reports that Revolution Wind must submit to NMFS; however, as described in Comment 39, we do plan to make the final reports available, which must summarize all of the information contained in the weekly and monthly reports. Accordingly, NMFS has determined requiring additional reporting beyond that described in the proposed rule is not warranted and that the existing reporting requirements support a suite of measures that will effect the least practicable adverse impact on marine mammals and their habitat.

Comment 19: Commenters recommended that NMFS implement diel restrictions for HRG surveys within 1.5 hours of civil sunset and in low visibility conditions when the visual clearance zone and shutdown zone (referred to as the “exclusion zone” by the commenter) cannot be visually monitored by the Lead PSO.

Response: NMFS acknowledges the limitations inherent in visual detection of marine mammals at night. As proposed, this final rule requires that visual PSOs use alternative technology (*i.e.*, infrared or thermal cameras) during periods of low visibility to monitor the clearance and shutdown zones. We note that no Level A harassment is expected to result from exposure to HRG equipment, even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.*, <36.5 m (119.8 ft) for all sources). Regarding Level B harassment, any potential impacts are limited to short-term behavioral responses. Given these factors combined with other mitigation measures, NMFS has determined that more restrictive mitigation requirements are not warranted.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree at night if, in fact, detectability is less at night and animals do approach within the small harassment zone but would not result in

any significant reduction in either intensity or duration of noise exposure over the course of the surveys. In fact, the restrictions recommended by the commenters could result in the surveys spending increased total time (number of days) on the water introducing noise into the marine environment, which may result in greater overall impacts to marine mammals; thus, the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the ability of the applicant to begin operations only during daylight hours, which could result in the applicant failing to collect the data they have determined is necessary within the specific timeframe and, subsequently, may necessitate the need to conduct additional surveys in the future across additional days. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 20: Commenters recommended that NMFS prohibit HRG surveys during times of highest risk for North Atlantic right whales (foraging and migration and times when mother-calf pairs, pregnant females, surface active groups, or aggregations of three or more whales (indicative of feeding or social behavior), using the best available science to define high-risk timeframes. Commenters stated that the Project is sited in critically important year round North Atlantic right whale foraging and socializing habitat; thus, NMFS should require corresponding year-round protections and critical mitigation measures. Commenters recommended that NMFS develop a real-time mitigation and monitoring protocol to dynamically manage the timing of HRG surveys to ensure those activities are undertaken during times of lowest risk for all relevant large whale species.

Response: NMFS neither anticipates nor authorizes take of North Atlantic right whales by Level A harassment (PTS) from this activity. While NMFS is authorizing a total 22 Level B harassment takes of North Atlantic right whales incidental to HRG surveys over the 5-year effective period of this rulemaking, the required mitigation will

affect the least practicable adverse impact on the species from this activity. Specifically, the largest modeled Level B harassment zone size for the sparker (141 m) is already much smaller than the required separation, clearance, and shutdown distances for North Atlantic right whale (500 m) and any unidentified large whale must be treated as if it were a North Atlantic right whale, triggering associated mitigation. Any Level B harassment that is not avoided is not expected to impact important feeding or other behaviors that may occur throughout the year in the Project Area in a manner that poses energetic or reproductive risks for any individuals. NMFS also notes that North Atlantic right whale presence, while not completely absent, decreases significantly during summer months as compared to winter when the majority of foundation installation would occur. Given the minimal anticipated impacts of the HRG survey, NMFS disagrees that additional mitigation measures, including dynamic management of HRG surveys timing, are warranted.

Comment 21: Commenters suggested that all acoustic and visual monitoring must begin at least 60 minutes prior to the start of or re-start of pile driving and must be conducted throughout the entire duration of the pile driving event. They also suggest that visual monitoring must continue for 30 minutes after pile driving has ceased.

Response: The recommended requirements were included in the proposed rule and are carried forward in this final rule. Also, as proposed, this final rule includes a requirement that Revolution Wind review PAM data collected for at least 24 hours immediately prior to pile driving, for situational awareness. NMFS notes that if PAM continues throughout any pauses in pile driving, Revolution Wind is not required to begin the clearance process again (*i.e.*, monitor for 60 minutes, ensuring the clearance zone is free of marine mammals for 30 minutes immediately prior to recommencing pile driving). However, pile driving would not be allowed to recommence until the clearance zones are confirmed to be visually and acoustically clear of marine mammals.

Comment 22: Commenter recommends that UXOs/MECs must first be evaluated to see if they can be moved without detonation. If detonation must occur, the commenter states that the mitigation measures for pile driving should be the same with regards to noise abatement technology, clearance zones, and the use of PSOs. If the impact area is larger than predicted after detonation, the commenter suggests that

expanded mitigation measures should be implemented.

Response: As proposed, this final rule requires Revolution Wind to use the ALARP approach such that detonation would be the last resort to removing a UXO/MEC. That is, Revolution Wind is required to use detonation as a means of removing UXO/MECs only if all other options of removal have been exhausted. The following proposed mitigation measures are also required by this final rule: Revolution Wind will be required to implement visual monitoring using PSOs and PAM prior to detonation; these PSOs and PAM operators will be required to clear the appropriate zones prior to Revolution Wind detonating any UXO/MEC; SFV must be conducted on every UXO/MEC; and a double big bubble curtain must be used that is positioned far enough away from the blast such that the hose nozzles are not damaged.

Furthermore, NMFS retains the ability to modify existing mitigation measures through adaptive mitigation in the event new information becomes available and if doing so creates a reasonable likelihood of more effectively accomplishing the goal(s) of the measure.

Comment 23: Commenter asserts that the LOA must include requirements to hold all vessels associated with site characterization surveys accountable to the ITA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS agrees and notes, as described in the proposed rule and this final rule, that the regulations apply to Revolution Wind and those persons it authorizes or funds to conduct the specified activities on its behalf; a copy of the LOA must be in the possession of Revolution Wind, its designees, all vessel operators, PSOs/PAM operators; and Revolution Wind must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and rule requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 24: A commenter raised concerns about offshore wind activities leading to increases in vessel traffic and vessel noise, which may increase the risk of North Atlantic right whales being struck by a vessel and may disrupt normal North Atlantic right whale behavior. Another commenter recommends that NMFS restrict vessels of all sizes associated with the projects to travel at 10 kn (11.5 mph) or less at all times to avoid vessel strikes to North Atlantic right whales. Other commenters recommend that NMFS require management measures of all boats that reduces the risk of lethal vessel strikes to a level approaching zero. They suggest implementing a mandatory 10 kn (11.5 mph) speed restriction for all project-associated vessels at all times, except in limited circumstances where the best available scientific information demonstrates that whales do not use an area. In addition, a commenter claims that vessel speed restrictions are not 'fully mandated' or enforced for offshore wind vessels.

Response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Revolution Wind's activities and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the rulemaking, the potential for vessel strike is so low as to be discountable. All of the mitigation measures that were included in the proposed rulemaking are now required in the final regulations (see § 217.274(b)). Based on our analysis, we have determined that the vessel strike avoidance measures in the rulemaking are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat.

Furthermore, we contend that the commenter who raised concerns about offshore wind activities leading to increases in vessel traffic and vessel noise is conflating two different points: there is a difference between vessel strike risks and impacts to marine mammals due to noise from construction. NMFS acknowledges the aggregate impacts of Revolution Wind's vessel operations on the acoustic habitat of marine mammals and has considered it in the analysis (see responses to Comments 14 and 42). Another commenter's reference to vessel speed restrictions being "not fully mandated" is unclear. NMFS refers again to the required vessel strike avoidance measures described above. The commenter does not provide a rationale for its suggestion that vessel speed restrictions are not enforced for offshore

wind vessels. We note that all vessels associated with Revolution Wind's activities must be equipped with a properly installed, operational Automatic Identification System (AIS) device and Revolution Wind must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources, thus facilitating monitoring of vessel speeds. In addition, NMFS maintains an Enforcement Hotline for members of the public to report violations of vessel speed restrictions. Further, the LOA states that the authorization may be modified, suspended, or revoked if the holder fails to abide by the conditions prescribed therein.

Comment 25: A commenter states that the LOA must include conditions for the survey and construction activities that will first avoid adverse effects on North Atlantic right whales in and around the area and then minimize and mitigate the effects that cannot be avoided. This should include a full assessment of which activities, technologies and strategies are truly necessary to achieve site characterization and construction to inform development of the offshore wind projects and which are not critical, asserting that NMFS should prescribe the most appropriate techniques that would produce the lowest impact while achieving the same goals while prohibiting those other tools/techniques that would cause more frequent, intense, or long-lasting effects.

Response: The MMPA requires that we include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the rule should include conditions for the construction activities that will first avoid adverse effects on North Atlantic right whales in and around the Project Area, where practicable and then minimize the effects that cannot be avoided. NMFS has determined that this final rule meets this requirement to effect the least practicable adverse impact. The commenter does not make any specific recommendations of measures to add to the rulemaking. NMFS is required to authorize the requested incidental take if it finds such incidental take of small numbers of marine mammals by the requestor while engaging in the specified activities within the specified geographic region will have a negligible impact on such species or stock and where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. As described in this notice of final rulemaking, NMFS finds that small numbers of marine mammals may be

taken relative to the population size of the affected species or stocks and that the incidental take of marine mammal from all of Revolution Wind's specified activities combined will have a negligible impact on all affected marine mammal species or stocks. It is not within NMFS' authority to determine the requestor's specified activities.

Comment 26: A commenter recommended that the use of quieter foundations be given full consideration when selecting a "preferred alternative" and that direct drive turbines be used in lieu of gear boxes.

Response: The commenter's reference to a "preferred alternative" suggests this comment is specific to the Environmental Impact Statement (EIS) BOEM developed for the project. NMFS agrees with the commenter that full consideration of various turbine foundations should be evaluated in an EIS but also recognizes that there are technological challenges and that the ultimate foundation type chosen must be practicable. Regardless, this rule evaluates the specified activities as described in Revolution Wind's MMPA application, which includes installation of monopiles. With respect to direct-drive, NMFS agrees that the best available science indicates that these are known to be less noisy than gearboxes and we understand gearboxes are older technology. Revolution Wind has confirmed with NMFS that direct drive turbines will be used for the Revolution Wind project.

Monitoring, Reporting, and Adaptive Management

Comment 27: Commenters recommended that NMFS increase the frequency of information review for adaptive management to at least once a quarter and also have a mechanism in place to undertake review and adaptive management on an ad hoc basis if a serious issue is identified (e.g., if unauthorized levels of Level A take of marine mammals are reported, or if serious injury or mortality of an animal occurs).

Response: Regarding the recommendation that NMFS have a mechanism in place to undertake review and adaptive management on an ad hoc basis if a serious issue is identified, there are no timing restrictions in the adaptive management provisions and, therefore, NMFS may undertake review and adaptive management actions at any time under the regulations, as written. Regarding the recommendation to increase the frequency of information review, Revolution Wind is required to submit weekly, monthly, and annual reports that NMFS will review in a

timely manner and may act on pursuant to the adaptive management provisions at any time and, therefore, a separate specific quarterly review is unnecessary.

Comment 28: Commenters recommended that NMFS require robust monitoring protocols during pre-clearance and when HRG surveys are underway, including (1) passive acoustic monitoring from a nearby vessel (other than the survey vessel) or a stationary unit to avoid masking, (2) visual monitoring of the clearance zone for North Atlantic right whales and other large whales by two on-duty PSOs each scanning 180 degrees and with another two PSOs stationed on the vessel (for a total of four PSOs on the survey vessel), and (3) visual and acoustic monitoring beginning 30 minutes prior to commencement or re-initiation of survey activities through the duration of the survey.

Response: Regarding the recommendation to require acoustic monitoring (in any form) to support clearance and shutdown requirements for HRG surveys, please see NMFS response to Comment 14, which describes why PAM is not warranted for HRG surveys. With respect to the number of PSOs, NMFS is not requiring four on-duty PSOs given the very small harassment zone sizes associated with HRG surveys. In the proposed rule and in this final rule, PSOs are required to commence monitoring for marine mammals 30 minutes before HRG surveys begin; hence, this recommendation has already been satisfied.

Comment 29: Commenters recommended that NMFS require infrared technology to support visual monitoring for all vessels responsible for crew transport and during any pile driving activities that occur in periods of darkness or nighttime to supplement the visual monitoring efforts for marine mammals. They additionally included a suggestion that additional observers and monitoring approaches (i.e., infrared, drones, hydrophones) must be used, as determined to be necessary, to ensure that monitoring efforts for the clearance and shutdown zones are effective during daytime, nighttime, and during periods of poor visibility.

Response: NMFS notes the commenter's recommendations were included in the proposed rule and are carried forward here. Specifically, NMFS described in the proposed rule, and is requiring in the final rule, that infrared technologies and PAM hydrophone deployments be available and used before, during, and after pile driving. Moreover, since publication of the proposed rule, Revolution Wind has

submitted an Alternative Monitoring Plan that includes details about advanced technologies for monitoring marine mammals at night for both trained crew observers and PSOs. As for the recommendation to specifically require drones, NMFS would evaluate any proposal including drones on a case-by-case basis but is not requiring use of this technology. The commenter did not provide data indicating drones would be more effective than other monitoring technology already required.

Comment 30: Commenters recommended that additional monitoring of the visual clearance and shutdown zones must be undertaken by PSOs located on the pile driving vessel and on an additional vessel that would circle the pile driving site. They specified that a minimum of four PSOs must be on each vessel and must have two PSOs monitoring per shift operating on a two on, two off rotation, with another commenter suggesting that human observation be supplemented with infrared (IR) technology and drones.

Response: NMFS notes the proposed rule aligned with the recommendation, requiring a total of four PSOs on each monitoring vessel, two on-duty and two off-duty, working in rotation. On-duty PSOs on the pile driving vessel and the secondary PSO vessel, circling at a distance from the pile, would each monitor 180 degrees. To ensure marine mammal detection is maximized, and in response to public comments, NMFS is now requiring monitoring for marine mammals before, during, and after foundation installation and is requiring in this final rule three on-duty PSOs on both platforms such that each PSO is responsible for 120 degree coverage. In addition, as proposed, this final rule requires that visual observers must be equipped with alternative monitoring technology (e.g., night vision devices, infrared cameras) to monitor clearance and shutdown zones during periods of low visibility (e.g., darkness, rain, fog, etc.).

Comment 31: Commenters recommended that NMFS should require sound field verification during installation of WTG and OSS foundations on the first monopile installed and then on a random sample of monopiles throughout the installation process. They also noted that they do not support the installation of unmitigated piles. They added that all sound source validation reports for field measurements must be made publicly available after being evaluated by both NMFS and BOEM prior to the installation of any additional monopiles. Finally, the Commission

recommended that NMFS require wind farm applicants to include monitoring of operational sound in their SFV plans in all future proposed rules.

Response: NMFS notes that, as proposed, this final rule requires that no unmitigated piles can be installed and that SFV is required for the first three piles and additional piles where conditions suggest noise levels may be higher or propagate farther than those piles previously measured. Furthermore, under this final rule, Revolution Wind must ensure that measured sound levels do not exceed those modeled assuming 10 dB of attenuation, which will be validated through SFV. Revolution Wind has the Lease Area data to identify if a pile would be more difficult to drive than the initial piles measured, and the requirement that they would have to conduct SFV on such piles where information suggests a pile may be more difficult to drive. Given these requirements, NMFS does not believe random sampling is necessary.

NMFS acknowledges the importance of transparency in the reporting process (see Comment 39) and plans to make all final SFV reports on our website. Regarding the Commission's suggestion that NMFS require SFV during operations, NMFS notes this requirement was included in the proposed rule and in this final rule.

Comment 32: The Commission suggested that the monitoring measures included in the proposed rule may not be sufficient in reducing the potential for Level A harassment of North Atlantic right whales, specifically indicating that visually monitoring a 2.3 to 4.4 km would prove difficult and cited literature (Oedekoven and Thomas (2022)) estimating effectiveness of marine mammal observers (MMOs) to be 54 percent for detecting orquals at 914 m or more, 31 percent for small cetaceans in pods of more than six, and 14 percent for small cetaceans in pods of six or fewer. The Commission did not provide any recommendations to increase visual detection capabilities.

Response: The time of year when Revolution Wind would be conducting the majority of pile driving is when North Atlantic right whale density in the Project Area is relatively low, given that pile driving is seasonally restricted from December 1–April 30, unless Revolution Wind receives NMFS' prior approval to conduct activities in December. Although modeling predicts 17.5 Level A harassment North Atlantic right whale exposures (Table 12 in final rule), this estimate does not consider any mitigation measures, other than 10 dB of sound attenuation, or natural

avoidance of the animal to loud sounds. Revolution Wind must delay or shutdown impact pile driving if a North Atlantic right whale is visually detected at any distance or acoustically detected at any distance within the PAM monitoring zone, a measure that is more conservative than the finite clearance and shutdown zones determined for other large whale species. The Commission cites information from a paper related to the use of trained lookouts and a team of two on-duty MMOs on moving Navy military vessels actively engaged in sonar training (Oedekoven and Thomas, 2022) to support its claim that visual monitoring would prove difficult. We note that these "trained lookouts" are Navy personnel who are specifically trained as lookouts in contrast to NMFS-approved PSOs who are required to have specific education backgrounds, trainings, and experience before undertaking PSO duties (see requirements found in the regulatory text at Section 217.275(a)). NMFS disagrees that the statistics generated from that report are equivalent to the effectiveness of monitoring for the Revolution Wind project. At least three PSOs would be placed on the stationary pile driving platform and three PSOs would also be placed on each of two dedicated PSO vessels traveling at slow speeds (less than 10 kn (11.5 mph)) for a total of nine PSOs. Concurrently, real-time PAM is required to supplement visual monitoring during impact pile driving and UXO/MEC detonation. Further, Revolution Wind must monitor several times daily supplemental marine mammal detection information systems (e.g., the Right Whale Sighting Advisory System) to increase situational awareness. We note that the MMO team in Oedekoven and Thomas (2022) was not always using PAM in that study and had significantly more *Balaenoptera spp.* sightings than the lookout team (see Table 2 in Oedekoven and Thomas (2022)). Given the monitoring measures that are required for the Project in combination with the mitigation measures (i.e., clearance and shutdown zones), NMFS disagrees that the monitoring measures will be insufficient to avoid Level A harassment (PTS) of North Atlantic right whales.

Comment 33: The Commission recommended that NMFS require Revolution Wind to have PAM operators also review acoustic data for at least 24 hours prior to UXO/MEC detonations, when available.

Response: We appreciate the Commission's recommendation and have incorporated it into the final rule.

Comment 34: A commenter stated that Revolution Wind should be required to use PSOs at all times when underway.

Response: NMFS is not requiring PSOs to be onboard every transiting vessel. However, as described in the proposed rule and carried forward in this final rule, Revolution Wind must have trained observers onboard all vessels. The dedicated observer may be a PSO or a crew member with no other concurrent duties. NMFS is also requiring Revolution Wind to provide a Vessel Strike Avoidance Plan to NMFS 180 days prior to the onset of vessel use. Revolution Wind submitted that plan on July 13, 2023, and a revised version on August 25, 2023. Once approved, all plans will be made available on NMFS' website.

Comment 35: A commenter recommended that the LOA should require all vessels supporting site characterization to be equipped with and to use Class A Automatic Identification System (AIS) devices at all times while on the water. The commenter suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

Response: NMFS agrees and has included an AIS requirement in more recently issued IHAs and wind construction proposed rules. This final rule includes a requirement that all vessels associated with the project be equipped with AIS.

Comment 36: The Commission recommended that NMFS require Revolution Wind to submit a PAM plan and to allow for public comments to occur prior to the issuance of the final rule. The Commission specifies that this plan should include the number, type(s) (e.g., moored, towed, drifting, autonomous), deployment location(s), bandwidth/sampling rate, sensitivity of the hydrophones, estimated detection range(s) for ambient conditions and during pile driving, and the detection software to be used. They also recommend that Revolution Wind and other wind developers consider whether vector sensors should be used in addition to deployed hydrophones to enhance detection capabilities, with a particular focus on "those vocalizations that may be drowned out by the hammer strikes and resulting reverberation."

Response: NMFS notes that the Commission's recommendation for Revolution Wind to submit a PAM Plan to NMFS for approval is consistent with the proposed rule and this final rule. As proposed, under this final rule a PAM plan must be submitted to NMFS at least 180 days prior to the start of the activity. Further, NMFS identified the requirements that Revolution Wind

must meet in its PAM plan in the proposed rule, which was made available for public comment, and those requirements are included in this final rule. Given NMFS' extensive expertise with passive acoustic monitoring and the fact that we are coordinating with BOEM's Center for Marine Acoustics (CMA), NMFS has determined that approval of the plan does not warrant public input. However, NMFS will share the plan with the Commission for review prior to approval of the plan. NMFS has included the Commission's recommendations, among other things, of what would be required in the PAM plan.

Comment 37: The Commission recommended that in the final rule NMFS: (1) specify which model-estimated zones (i.e., acoustic ranges, exposure ranges, mitigation zones, monitoring zones) and which metrics (i.e., flat R_{max} , flat $R_{95\%}$) should be compared to the *in-situ* Level A and B harassment zones, (2) specify which type of *in-situ* Level A harassment zone (i.e., acoustic or exposure ranges) should be calculated, and, (3) require that *in-situ* measurements be conducted for monopiles that are not represented by the previous three locations (i.e., substrate composition, water depth) or by the hammer energies and numbers of strikes needed or number of piles installed in a given day.

Response: We agree with the Commission about the importance of specifying quantities to be compared following SFV and have required in the final rule that calculations of the $R_{95\%}$ SEL and $R_{95\%}$ SPL_{rms} acoustic ranges for Level A harassment and Level B harassment, respectively, based on *in situ* measurements must be compared to the same modeled metrics.

Regarding the Commission's third suggestion, NMFS notes that, under the proposed rule, if a monopile installation site or construction scenario was determined to be not representative of the rest of the monopile installation sites, Revolution Wind would be required to provide information on how additional sites and construction scenarios would be selected for SFV measurements, as would be described in their Foundation Installation Pile Driving SFV Plan. This plan would also be required to describe the methodology for collecting, analyzing, and preparing SFV measurement data for submission to NMFS. We agree with the Commission that this information is important and include the same requirement in the final rule. However, we do not agree with the suggestion to require additional SFV based on variations in the hammer energies,

number of strikes used for installation, or number of piles installed per day. NMFS applied the largest distances modeled, which represents the maximum number of piles installed per day, maximum strikes predicted, and maximum hammer energies. Because of this, Revolution Wind is required to stay within the bounds of the analysis. We also note that any variation assuming less hammer strikes, less piles installed per day, or lower hammer energies would likely result in less anticipated take per day, as the take authorized in the final rule is based on the highest bounds of the analysis. For all these reasons, we are not requiring additional SFV based on variations specific to the hammer energy, number of piles installed, or the total number of strikes.

Comment 38: The Commission recommended that NMFS require Revolution Wind to include in the pile driving SFV report additional metrics not identified in the proposed rule, including SPL_{rms} source levels, cumulative SEL, ranges to Level A harassment and Level B harassment thresholds, and types and locations of sound attenuation systems. In addition, the Commission recommended that NMFS require Revolution Wind to deploy a minimum of three hydrophones for SFV during impact pile driving.

Response: NMFS partially concurs with the Commission's recommendations. This final rule requires the interim report to include peak, sound pressure level (SPL), and cumulative sound exposure level (SEL_{cum}) metrics for all hydrophones, estimated distances to NMFS Level A harassment and Level B harassment threshold isopleths, types and locations of sound attenuation systems. This information is also required in the final report. NMFS is not requiring source levels be estimated in interim reports given the quick turnaround time (48 hours) and amount of data needing to be analyzed in that time. The purpose of the interim reports are to determine that modeled distances to isopleths corresponding to Level A harassment and Level B harassment thresholds are not being exceeded and to determine if any mitigative action needs to be taken. Hence knowing source levels is not required at this stage. However, NMFS is requiring source levels (peak, cumulative SEL, and SPL_{rms}) be included in the final SFV report. Regarding the hydrophones for SFV during pile driving, NMFS is requiring that Revolution Wind place two hydrophones at four locations at an azimuth of least propagation loss and

two at 750 m and 90 degrees from this azimuth (total = 10 hydrophones).

Comment 39: Commenters stated that the LOA must include a requirement for all phases of the Revolution Wind site characterization to subscribe to the highest level of transparency, including frequent reporting to Federal agencies, requirements to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS or the U.S. Coast Guard as soon as possible and no later than the end of the PSO shift. A commenter stated that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the ITA should require all reports and data to be accessible on a publicly available website. Another commenter also suggested that all quarterly reports of PSO sightings must be made publicly available to continue to inform marine mammal science and protection.

Response: NMFS notes the commenters' recommendations to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS are consistent with the proposed rule and this final rule (see Situational Reporting). We refer the reader to section 217.275(g)(13)(i)–(vi) of the regulations for more information on situational reporting.

Daily visual and acoustic detections of North Atlantic right whales and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (<https://whalemap.org/whalemap.html>). Further, recent acoustic detections of North Atlantic right whales and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website (<https://www.fisheries.noaa.gov/resource/data/passive-acoustic-cetacean-map>). Given the open access to the resources described above, NMFS does not concur that public access to quarterly PSO reports is warranted, and we have not included this measure in the authorization. However, NMFS will post all final reports to our website. We reference the commenters to Section 217.275(g) for more information on reporting requirements in the regulations.

Effects Assessment

Comment 40: Commenters stated that NMFS must utilize the best available science in their analysis. A commenter stated that NMFS must use the more recent and best available science in evaluating impacts to North Atlantic

right whales, including updated population estimates, recent habitat usage patterns for the Project Area, and a revised discussion of the acute and cumulative stress on whales in the region. Another commenter further added that NMFS should use the most comprehensive models for estimating marine mammal take and developing robust mitigation measures.

Response: The MMPA and its implementing regulations require that incidental take regulations be established based on the best available information, which does not always mean the most recent information. NMFS generally considers the information in the most recent U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments Report (SAR; Hayes *et al.*, 2023) to be the best available information for a particular marine mammal stock because of the MMPA's rigorous SAR procedural requirements, which includes peer review by a statutorily established Scientific Review Group.

Regarding the comment related to the North Atlantic right whale population abundance that was cited in the proposed rule, since publication of the proposed rule, NMFS has finalized the 2022 Stock Assessment Report indicating the North Atlantic right whale population abundance is estimated as 338 individuals (Nbest; 95 percent confidence interval: 325–350; 88 FR 54592, August 11, 2023). NMFS has used this most recent best available scientific information in the analysis of this final rule. This new estimate, which is based off the analysis from Pace *et al.* (2017) and subsequent refinements found in Pace (2021), is included by reference in the final 2022 SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>) and provides the most recent and best available estimate, including improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. The results from the Pace (2021) paper that informed the final 2022 SARs strengthened the case for a change in mean survival rates after 2010 through 2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the SARs are peer reviewed by other scientific review groups prior to being finalized and published and that the North Atlantic Right Whale Report Card (Pettis *et al.*, 2022) does not undertake this process.

Based on this, NMFS has considered all relevant information regarding North Atlantic right whale, including the information cited by the commenters. However, NMFS has relied on the final 2022 SAR in this final rule as it reflects the best available scientific information.

We note that this change in abundance estimate does not change the estimated take of North Atlantic right whales or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Revolution Wind's construction activities.

While NMFS cannot require applicants to utilize specific models for the purposes of estimating take incidental to offshore wind construction activities, we evaluate the models used to support take estimates to ensure that they are methodologically sound and incorporate the best available science. NMFS does require use of the Roberts *et al.* (2016, 2023) density data and SARs abundance estimates for all species, both of which represent the best available science regarding marine mammal occurrence.

Comment 41: Several commenters raised concerns regarding the cumulative impacts of the multiple offshore wind projects being developed throughout the range of North Atlantic right whales and other marine mammal species and specifically recommend that we carefully consider the take from all of these projects in combination when conducting the negligible impact analysis for Revolution Wind. One commenter recommended NMFS establish an "IHA threshold" for offshore wind activities regionally and across project phases. Another commenter suggests NMFS' issuance of ITAs for offshore wind construction projects should be based on a Programmatic Environmental Impact Statement that assesses cumulative impacts analyses of individual projects as well as the cumulative impacts from the consequent multiple project developments rather than separate EISs for each project. Another commenter suggested that NMFS should analyze the cumulative impacts of the multiple concurrent phases of offshore wind energy development on right whales and other marine mammal species in southern New England waters prior to proceeding with permitting the Revolution Wind Project.

Response: Neither the MMPA nor NMFS' implementing regulations call for consideration of the take resulting from other specified activities in the negligible impact analysis. The preamble to NMFS' implementing regulations (54 FR 40338, September 29,

1989) states, in response to comments, that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors). The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this incidental take regulation (ITR), as well as other ITRs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The ITRs are unrelated in the sense that they are discrete actions under section 101(a)(5)(A) issued to discrete applicants. Section 101(a)(5)(A) of the MMPA requires NMFS to make a determination that the take incidental to a “specified activity” will have a negligible impact on the affected species or stocks of marine mammals.

NMFS’ implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the “specified activity” for which incidental take coverage is being sought under section 101(a)(5)(A) is generally defined and described by the applicant. Here, Revolution Wind was the applicant for the ITR, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis and (2) that reasonably foreseeable cumulative effects would also be considered under Section 7 of the ESA for listed species, as appropriate. Accordingly, NMFS has adopted an EIS written by BOEM and reviewed by NMFS as part of its inter-agency coordination. This EIS addresses cumulative impacts related to Revolution Wind and substantially

similar activities in similar locations. Cumulative impacts regarding the promulgation of the regulations and issuance of a LOA for construction activities, such as those planned by Revolution Wind, have been adequately addressed under NEPA in the adopted EIS that supports NMFS’ determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of Revolution Wind on ESA-listed species, including North Atlantic right whales, was analyzed under Section 7 of the ESA when NMFS engaged in formal inter-agency consultation with GARFO. The Biological Opinion for Revolution Wind determined that NMFS’ promulgation of the rulemaking and issuance of a LOA for construction activities associated with leasing, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

Comment 42: Commenters stated that (1) NMFS’ reliance on the 160 dB (re 1 $\mu\text{Pa}^2\text{s}$) threshold for behavioral harassment is not supported by the best available scientific information and grossly underestimates takes by Level B harassment and (2) an assertion the monitoring protocols prescribed for the clearance zones are under-protective.

Response: For the reasons described below, NMFS disagrees that the 160-dB threshold for behavioral harassment is not supported by the best available science. The potential for behavioral response to an anthropogenic source can be highly variable and context-specific (Ellison *et al.*, 2012). While NMFS acknowledges the potential for Level B harassment at exposures to received levels below 160 dB rms, it should also be acknowledged that not every animal exposed to received levels above 160 dB rms will respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). Several studies (e.g., Nowacek *et al.*, 2004 and Kastelein *et al.*, 2012 and 2015) showed there were behavioral responses to sources below the 160 dB threshold but also acknowledged the importance of context in these responses. For example, Nowacek *et al.* (2004) reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 μPa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting

vessels or playbacks of ship noise even though the RLs were at least as loud and contained similar frequencies to those of the alert signal. The authors state that a possible explanation for whales responding to the alert signal and not responding to vessel noise is due to the whales having been habituated to vessel noise while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal, which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was responsible for the response. DeRuiter *et al.* (2012) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Finally, Gong *et al.* (2014) highlighted that behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state. Similarly, Kastelein *et al.* (2015) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool, but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the received sound pressure level for estimating the onset of Level B behavioral harassment takes and is currently considered the best available science while acknowledging that the 160 dB_{rms} step-function approach is a simplistic approach. However, there appears to be a misconception regarding the concept of the 160 dB threshold. While it is correct that in practice it works as a step-function (i.e., animals exposed to received levels above the threshold are considered to be “taken” and those exposed to levels below the threshold are not), it is in fact intended as a sort of mid-point of likely behavioral responses, which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context. What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that appropriately considered take while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take while we can qualitatively address the variation

in responses across different received levels in our discussion and analysis.

Overall, we reiterate the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.*, feeding, resting, or migrating), prior experience, and biological factors (*e.g.*, age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.*, 2007; Ellison *et al.*, 2012; Southall *et al.*, 2021). For example, Gomez *et al.* (2016) reported that RL was not an appropriate indicator of behavioral response.

There is currently no concurrence on these complex issues, and NMFS followed its practice at the time of submission and review of this application in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. This threshold has remained in use in part because of the practical need to use a relatively simple threshold based on the best available information that is both predictable and measurable for most activities. We note that the seminal reviews presented by Southall *et al.* (2007), Gomez *et al.* (2016), and Southall *et al.* (2021) did not suggest any specific new criteria due to lack of convergence in the data. NMFS is currently evaluating available information towards development of updated guidance for assessing the effects of anthropogenic sound on marine mammal behavior. However, undertaking a process to derive defensible exposure-response relationships, as suggested by Tyack and Thomas (2019), is complex. The recent systematic review by Gomez *et al.* (2016) was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral responses to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here; there is no agreement on what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with

regard to acoustic thresholds but pending additional consideration and process is reliant upon an established threshold that is reasonably reflective of available science.

Regarding the assertion that monitoring protocols prescribed for the clearance and shutdown zones (called "exclusion zones" in the comment letter) are under-protective, please refer to Comments 13, 14, 22, 30.

Comment 43: Commenters recommended that NMFS fully account for the consequences of any other proposed North Atlantic right whale seasonal restriction on other protected species and evaluate alternative risk reduction strategies that would protect multiple species.

Response: In order to promulgate a rulemaking under Section 101(a)(5)(A) of the MMPA, NMFS must find that the total taking from the specified activities will have a negligible impact on species and stocks among other requirements, and subsequently prescribe means of effecting the least practicable adverse impact on affected species or stock and its habitat. In the proposed rule and in this final rule, NMFS has determined the specified activities will have a negligible impact on species and stock and the mitigation measures will affect the least practicable adverse impact on all of the affected species or stocks and their habitat. NMFS acknowledges that the seasonal restriction for impact pile driving is to effect the least practicable adverse impact on North Atlantic right whales; however, NMFS notes that this seasonal restriction provides additional protections to large whale species that occur off of Massachusetts during winter months. For example, fin whales are the second-most commonly occurring baleen whale species, based on density (Roberts *et al.*, 2023), in the Project Area from December through February and the fin whale feeding Biological Important Area (BIA) (March through October) overlaps the seasonal restriction period (March and April). Harbor porpoises, as another example, are also more likely to be more present when foundation installation and UXO/MEC detonation would not be occurring. As described in this final rule, there is no habitat of significance in the specified geographic region other than the seasonal migratory BIA for North Atlantic right whales and a small feeding BIA for fin whales.

Comment 44: A commenter claimed that the analyses supporting the proposed rule did not comprehensively consider potential indirect negative impacts to fishermen and coastal communities that could result from cumulative offshore wind activities,

particularly as those activities impact North Atlantic right whales (*i.e.*, vessel strike). In addition, a commenter requested an explanation of how the offshore wind industry will be held accountable for their impacts and asserts that the offshore wind industry must be accountable for incidental takes from construction and operations separately from the take authorizations for managed commercial fish stocks.

Commenters expressed concern about the potential impacts of offshore wind development on marine species, particularly the North Atlantic right whale, and the potential that any disturbance, added distress, and mortality of North Atlantic right whales will be attributed to the commercial, charter, and recreational fishers who frequently access these same areas in which offshore wind development is occurring. They requested a moratorium on new incidental harassment authorizations until more is known about the potential impacts of offshore wind development on marine species.

Response: NMFS has determined that no serious injury or mortality is anticipated to result from Revolution Wind's specified activities, and as discussed in the Negligible Impact Analysis and Determination section in this final rule, NMFS has determined that Revolution Wind's specified activities will have a negligible impact on marine mammal species or stocks. Furthermore, NMFS has determined that the mitigation measures will effect the least practicable adverse impact on marine mammals and their habitat. Neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (*e.g.*, fisheries) or coastal communities from issuance of an ITA pursuant to section 101(a)(5)(A). We note that the Revolution Wind Final EIS assesses the impacts of both BOEM and NMFS' actions (permitting Revolution Wind's activities and authorizing the associated take of marine mammals, respectively) on the human environment, including to fishermen and coastal communities, and NMFS considered the analysis, as appropriate, in the final decisions under the MMPA.

Regarding accountability, Revolution Wind would be required to submit frequent monitoring reports, which would include accounts of any takes by Level A harassment or Level B harassment. NMFS must withdraw or suspend any LOA, if issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or reporting measures are not being substantially complied with

(16 U.S.C. 1371(a)(5)(B); 50 CFR 216.206(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties, and knowing violations may result in criminal penalties (16 U.S.C. 1375). NMFS notes the anticipated impacts from Revolution Wind's activities (e.g., behavioral harassment, acoustic disturbance, temporary hearing loss) are different from those anticipated from fishing activities (e.g., entanglement).

Other

Comment 45: Commenters encouraged NMFS to issue LOAs on an annual basis, rather than a single 5-year LOA, to allow for the continuous incorporation of the best available scientific and commercial information and to modify mitigation and monitoring measures as necessary and in a timely manner. Both commenters also state that due to the precarious nature of the North Atlantic right whale, this annual approach is necessary to implement flexible protections.

Response: While NMFS acknowledges the commenters' rationale, we do not think it is necessary to issue annual LOAs as: (1) the final rule includes requirements for annual reports (in addition to weekly and monthly requirements) to support annual evaluation of the activities and monitoring results, and (2) the final rule includes an Adaptive Management provision (see § 217.277(c)) that allows NMFS to make modifications to the mitigation, monitoring, and reporting measures found in the LOA if new information supports the modifications and doing so creates a reasonable likelihood of more effectively accomplishing the goals of the measures.

Comment 46: The Commission recommended that NMFS specify in section 217.275(d)(9)(ii) of the final rule that the final SFV report must include source levels at 10 m during wind turbine operations, received levels at 50 m, 100 m, and 250 m from the wind turbine, operational parameters (i.e., direct drive/gearbox information, turbine rotation rate), sea state conditions, and any nearby anthropogenic activities. In addition, the Commission recommends that NMFS rectify in the final rule the following proposed rule omissions and errors: (1) Proposed section 217.272(a) should also specify impact pile driving and removal of casing pipes and vibratory pile installation or removal of goal posts, (2) Proposed section 217.272(b) omitted impact removal of casing pipes, (3) Proposed section

217.274(d)(3)(vii) contradicts proposed section 217.274(f)(5)(1), which specifies that SFV must be conducted for each UXO/MEC detonation, (4) Proposed section 217.274(f)(2) specified that seasonal restrictions for UXO/MEC detonations would be in place from 1 December through 31 April; however, April has only 30 days, (5) Bellmann (2021) was cited incorrectly as Bellmann and Betke (2021) in the preamble to the final rule. (6) The terms 'small odontocetes', 'delphinids and harbor porpoises', and 'dolphins and porpoises' were used interchangeably throughout the various mitigation measures in proposed section 217.274, and the terms 'seals' and 'pinnipeds' were used interchangeably or omitted altogether from the various mitigation measures in proposed section 217.274.

Response: We appreciate the specific suggestions provided by the Commission here. We have rectified all of the concerns described in the Commission's list, except for those found in (6) above. Please note that the Section references for each of the items noted by the Commission have changed from those in the proposed rule due to reorganization. We have not made adjustments with respect to the suggestions regarding the intermixed use of "seals" versus "pinnipeds," and "small odontocetes" (which we now refer to as "odontocetes"), "delphinids and harbor porpoises", and "dolphins and porpoises," as those terms are clearly describing the species at hand. Furthermore, this variation in language does not affect the clarity or understanding of the final rule or its provisions.

Comment 47: A commenter claimed that NMFS, and BOEM should have conducted more public outreach for the Revolution Wind project and sought public comments from parties outside of the states in which the project's land-based operations will occur, given that marine mammals have migratory patterns that range the entire East Coast.

Response: NMFS disagrees that public outreach regarding the Revolution Wind project was limited to individuals in particular states. Both NMFS and BOEM provided all members of the general public from any location opportunities to comment on and provide information pertaining to Revolution Wind's potential impacts on marine mammals and the environment. BOEM published a Notice of Intent to prepare an EIS on April 30, 2021 (86 FR 22972) in the **Federal Register**, followed by a 30-day public comment period and three virtual scoping meetings (May 13, 18, and 20, 2021) to facilitate public engagement in development of an

assessment of potential impacts from Revolution Wind's planned activities. Additionally, BOEM's draft EIS (Revolution Wind Draft Environmental Impact Statement (DEIS) for Commercial Wind Lease OCS-A 0486) was made available for public comment on September 2, 2022 (87 FR 54248), which included a 45-day comment period. Finally, BOEM held three in-person public hearings on October 4, 2022, in Aquinnah, MA, October 5, 2022, in East Greenwich, CT, and October 6, 2022, in New Bedford, MA, and two virtual public hearings (again, open to all members of the public from any location) on September 29 and October 11, 2022. On March 21, 2022, NMFS published a Notice of Receipt (NOR) of Revolution Wind's adequate and complete MMPA ITA application in the **Federal Register** (87 FR 15942), which included a 30-day public comment period and access to the full application, which was posted on NMFS' publicly available website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy>). NMFS considered all of this information when developing the proposed rule, which was published in the **Federal Register** on December 23, 2022 (87 FR 79072). A 45-day public comment period followed publication of the proposed rule, during which NMFS received 404 comment submissions. NMFS carefully considered each of the received comments when developing this final rule. Comments submitted on the NOI, DEIS, NOR, and proposed rule were submitted by individuals from a variety of states, rather than the select few in Revolution Wind's Project Area. Thus, all members of the public had notice and opportunity to comment on multiple occasions and had access to relevant documents via NMFS' and BOEM's websites.

Comment 48: A commenter claimed that recent whale strandings are the result of offshore wind pre-construction activities. Another commenter suggested that NMFS should consider whether or not authorizing Level A harassment or Level B harassment should be permissible given the recent elevated public concern about potential impacts on marine mammals from offshore wind activities.

Response: NMFS emphasizes that there is no evidence that noise resulting from offshore wind development-related marine site characterization surveys, cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such

evidence or other scientific information to substantiate their claim. The best scientific information available indicates that only Level B harassment, or disruption of behavioral patterns (e.g., avoidance), may occur as a result of Revolution Wind's HRG surveys. NMFS will continue to gather data to help us determine the cause of these strandings. NMFS notes the Commission's statement: "There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively-associated with baleen whale strandings" (Marine Mammal Commission Newsletter, Spring 2023). There is an ongoing UME for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016, and we provide further information on the humpback UME in the humpback whale subsection in the Description of Marine Mammals in the Specific Geographic Region section of this final rule.

Changes From the Proposed to Final Rule

Since the publication of the proposed rule in the **Federal Register** (87 FR 79072, December 23, 2022), NMFS has made changes, where appropriate, that are reflected in the preamble text of this final rule and the final regulatory text. These changes are briefly identified below, with more information included in the indicated sections of the preamble to this final rule.

Changes to Information Provided in the Preamble

The information found in the preamble of the proposed rule was based on the best available information at the time of publication. Since publication of the proposed rule, new information has become available, which has been incorporated into this final rule as discussed below.

The following changes are reflected in the Description of Marine Mammals in the Specific Geographic Region section of the preamble to this final rule:

Given the release of NMFS' final 2022 SARs (Hayes *et al.*, 2023), we have updated the population estimate for the North Atlantic right whale (*Eubalaena glacialis*) from 368 to 338 and the total mortality/serious injury (M/SI) amount from 8.1 to 31.2. This increase is due to the inclusion of undetected annual M/

SI in the total annual serious injury/mortality.

Given the availability of new information, we have made updates to the UME summaries for North Atlantic right whales, humpback whales, minke whales, and phocid seals (pinnipeds).

The following changes are reflected in the Estimated Take section the preamble to this final rule:

Seal take estimates were previously calculated by scaling the take estimates derived from a single "seal" guild density using proportions calculated from the range-wide abundance values in the NMFS stock assessment reports. To more accurately estimate take for each species for all activities in the final rule, Revolution Wind scaled the single seal guild exposure estimate using proportions calculated from the relative occurrence of each species reported in PSO monitoring reports for HRG surveys conducted in the Project Area from 2018–2021 (AIS-Inc., 2019; Bennett, 2021; Stevens *et al.*, 2021; Stevens and Mills, 2021) and more recent data collected in 2023 during construction of the South Fork Wind Farm (South Fork Wind 2023, unpublished data).

Based on a recommendation by the Commission, we have increased the number of takes by Level A harassment of harbor porpoises incidental to cable landfall construction, specifically pneumatic hammering, from 0 to 24, should Revolution Wind choose to install casing pipes.

Based on a recommendation by the Commission, we have increased the number of common dolphin takes by Level B harassment for UXO/MEC detonations (from 211 to 632); HRG surveys during construction (from 2,354 to 4,457); and HRG surveys during operations (from 2,312 to 4,376).

Based on our consideration of the Commission's recommendation, we are authorizing the number of model-estimated Level A harassment (PTS) take (increased to group size where applicable) incidental to UXO/MEC detonations: fin whales (n=2), sei whales (n=2), humpback whales (n=2), minke whales (n=8), common dolphins (n=35), bottlenose dolphins (Western North Atlantic offshore stock) (n=8), and Atlantic white-sided dolphins (n=28). The proposed rule did not authorize Level A harassment (PTS) of these species incidental to UXO/MEC detonations.

Based on consideration of comments from the Commission, we are now also authorizing the amount of model-estimated Level A harassment (PTS) take of sei whales (n=3) and 5 gray seals (n=5), as well 20 percent of the model-estimated Level A harassment (PTS) for

the other species, including fin whales (2), minke whales (13), harbor porpoises (65), and harbor seals (7) during impact installation of monopiles. The proposed rule did not authorize Level A harassment (PTS) of these species incidental to impact pile driving monopiles.

In Tables 27 and 28, we have corrected mathematical errors reflected in Tables 32 and 33 of the proposed rule resulting from transcription errors and incorrect summation of take numbers for a given species across all activities (*i.e.*, foundation installation, landfall construction, UXO/MEC detonations, and HRG surveys). The corrections do not change NMFS' findings.

In the proposed rule, NMFS proposed to authorize take by Level B harassment of sperm whales (n=2) incidental to cofferdam installation. In this final rule, NMFS is not authorizing Level B harassment of sperm whales incidental to this specified activity because the sperm whale exposure estimate is 0.1 and the species exhibits a preference for deep oceanic habitat rather than the shallow waters in Narragansett Bay, thus, the probability of take is de minimis.

Changes in the Regulatory Text

We have made the following changes to the regulatory text, which are reflected, as appropriate, throughout this final rule and described, as appropriate, in the preamble.

For clarity and consistency, we revised two paragraphs in § 217.270 Specified activity and specified geographical region of the regulatory text to fully describe the specified activity and specified geographical region.

The following changes are reflected in § 217.272 Permissible Methods of Taking.

NMFS added vibratory pile driving of goal posts to the list of permissible methods of taking by Level B harassment as "goal posts" was inadvertently excluded;

Based on the Commission's recommendation to authorize take by Level A harassment from pneumatic hammering and NMFS' concurrence, NMFS added pneumatic hammering of casing pipes to the list of permissible methods of taking by Level A harassment.

The following changes are reflected in § 217.274 Mitigation Requirements and the associated Mitigation section of the preamble to this final rule.

Based on a recommendation by a commenter, NMFS added a requirement that all project vessels must utilize AIS.

Given that North Atlantic right whale density in the Project Area increases by an order of magnitude from November to December, NMFS expanded the seasonal restriction for impact pile driving to include December, during which impact pile driving must be avoided, although, with prior approval by NMFS, it may occur if necessary to complete the project.

NMFS added a requirement for a 10-m (32.8-ft) shutdown zone for all other in-water activities that are not expected to cause take of marine mammals (*e.g.*, trenching, dredging) which may be monitored by any individual on watch (approved PSO not specifically required).

NMFS has included mitigation and monitoring zones specific to the different UXO/MEC charge weights, rather than a single zone size assuming only the largest charge weight, as Orsted has since provided evidence to NMFS that they can reliably identify UXO/MEC charge weights in the field.

We now specify that the mitigation measure restricts all Project vessels, rather than only crew transfer vessels, from traveling over 10 kn (11.5 mph) in the transit corridor unless Revolution Wind conducts real-time acoustic monitoring to detect large whales (including North Atlantic right whales) in and near the transit corridor, and that this measure applies only when other speed restrictions are not in place.

We now specify that an acoustic detection of any large whale (rather than only North Atlantic right whales) via the PAM system within the transit corridor will trigger a 10 kn (11.5 mph) or less speed restriction for all Project vessels until the whale can be confirmed visually beyond 500m of the vessel or 24 hours following the detection and any re-detection has passed.

The following changes are reflected in the § 217.275 Monitoring and Reporting requirements and the associated Monitoring and Reporting section of the preamble to this final rule:

NMFS updated the process for obtaining NMFS approval for PSO and PAM Operators to be similar to requirements typically included for seismic (*e.g.*, airgun) surveys and have clarified education, training, and experience necessary to obtain NMFS' approval.

NMFS added a requirement to have at least three PSOs on pile driving vessels rather than two PSOs, as was originally described in the proposed rule.

NMFS increased the PAM shutdown zone from 3.9 km (summer) and 4.4 km (winter) by now requiring Revolution Wind to delay or shutdown if a North Atlantic right whale is acoustically

detected at any distance within the PAM monitoring zone.

Based on a recommendation by the Marine Mammal Commission, NMFS added a requirement that increases the time that PAM data must be reviewed prior to all UXO/MEC detonations from 1 to 24 hours (except in emergency cases where the 24-hour delay before the detonation occurred would create risk to human safety).

NMFS added a requirement that a double big bubble curtain must be placed at a distance that would avoid damage to the nozzle holes during all UXO/MEC detonations.

Based on a recommendation by the Marine Mammal Commission, NMFS added a requirement that a pressure transducer must be used during all UXO/MEC detonations.

NMFS added a requirement stating that Revolution Wind must use two NAS to ensure that measured sound levels do not exceed the levels modeled for a 10-dB sound level reduction for foundation installation (*e.g.*, double BBC (DBBC), hydro-sound damper, an AdBm Helmholtz resonator). A single bubble curtain must not be used;

NMFS added requirements that SFV must be conducted on every pile until measured noise levels are at or below the modeled noise levels, assuming 10 dB, for at least three consecutive monopiles, and that SFV is required for each UXO/MEC detonation.

NMFS added a requirement that Revolution Wind must deploy at least eight hydrophones at four locations (one bottom and one mid-water column at each location) along an azimuth that is likely to see lowest propagation loss, and two hydrophones (one bottom and one mid-water) at 750 m, 90 degrees from the primary azimuth during installation of all piles where SFV monitoring is required, and equivalent requirements during all UXO/MEC detonations.

NMFS is now requiring Revolution Wind deploy two dedicated PSOs vessels to monitor the clearance and shutdown zones prior to and during impact pile driving installation of monopile foundations. In addition to the three PSOs on the pile driving platform, three PSOs must be deployed on each of the dedicated PSO vessels to monitor for marine mammals.

NMFS is now requiring that Revolution Wind must deploy at least three PSOs on each observation platform for all detonations with clearance zones less than 5 km (3.1 mi). If the clearance zone is larger than 5 km, at least one dedicated PSO vessel (with at least three on-duty PSOs) and an

aerial platform (with at least two on-duty PSOs) must be used.

NMFS added a requirement that Revolution Wind submit a UXO/MEC PAM plan for NMFS' approval 180 days prior to the start of any UXO/MEC detonation.

NMFS now specifies that, for SFV during monopile installations, calculations of the $R_{95\%}$ SEL and $R_{95\%}$ SPL_{rms} acoustic ranges for Level A harassment and Level B harassment, respectively, based on in situ measurements must be compared to the same modeled metrics.

Based on consideration of the Commission recommendation, NMFS has added additional specified reporting requirements for SFV conducted during operations, and clarified the general SFV reporting metrics to align with the Commission's comments;

NMFS updated the North Atlantic right whale detection (visual and acoustic) reporting guidance.

NMFS removed the requirements for reviewing data on an annual and biennial basis for adaptive management and instead will make adaptive management decisions as new information warrants it.

Description of Marine Mammals in the Specific Geographic Region

As noted in the Changes From the Proposed to Final Rule section, since publication of the proposed rule (87 FR 79092, December 23, 2022), updates have been made to the abundance estimate for North Atlantic right whales and the UME summaries of multiple species. These changes are described in detail in the sections below; otherwise, the Description of Marine Mammals in the Specific Geographic Region section has not changed since the publication of the proposed rule in the **Federal Register** (87 FR 79072, December 23, 2022).

Sections 3 and 4 of Revolution Wind's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species (Revolution Wind, 2022). NMFS fully considered all of this information, and we refer the reader to these descriptions in the application, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS'

website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is authorized under this final rule and summarizes information related to the species or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS'

SARs; (16 U.S.C. 1362(20))). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of

individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available data at the time of publication which can be found in NMFS' 2022 final SARs (Hayes *et al.*, 2023), available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

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Table 2 -- Marine Mammal Species that May Occur in the Project Area and be Taken, by Harassment

Common Name	Scientific Name ⁵	Stock	ESA/MMP A status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
<i>Order Artiodactyla – Cetacea – Superfamily Mysticeti (baleen whales)</i>						
<i>Family Balaenidae</i>						
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	338 (0; 332; 2020) ⁶	0.7	31.2 ⁶
<i>Family Balaenopteridae (rorquals)</i>						
Blue whale	<i>Balaenoptera musculus</i>	Western North Atlantic	E, D, Y	UNK (UNK; 402; 1980-2008)	0.8	0
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, Y	1,396 (0; 1,380; 2016)	22	12.15
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	-, -, N	21,968 (0.31; 17,002; 2016)	170	10.6
<i>Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</i>						
<i>Family Physeteridae</i>						
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
<i>Family Delphinidae</i>						
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71; 54,433; 2016)	544	27
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	-, -, N	39,921 (0.27; 32,032; 2016)	320	0

Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic Offshore	-, -, N	62,851 (0.23; 51,914; 2016)	519	28
Long-finned pilot whales	<i>Globicephala melas</i>	Western North Atlantic	-, -, N	39,215 (0.30; 30,627; 2016)	306	29
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	-, -, N	35,215 (0.19; 30,051; 2016)	301	34
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	-, -, N	172,897 (0.21; 145,216; 2016)	1,452	390
<i>Family Phocoenidae (porpoises)</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31; 74,034; 2016)	851	164
<i>Order Carnivora – Superfamily Pinnipedia</i>						
<i>Family Phocidae (earless seals)</i>						
Gray seal ⁴	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,300 (0.22; 22,785; 2016)	1,458	4,453
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08; 57,637; 2018)	1,729	339

1 - ESA status: Endangered (E), Threatened (T) / MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2 - NMFS' marine mammal stock assessment reports can be found online

at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; Nmin is the minimum estimate of stock abundance.

3 - These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike).

4 - NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

5 - Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2023)).

6 - In the proposed rule (87 FR 79072, December 23, 2022), a population estimate of 368 was used which represented the best available science at the time of publication. However, since the publication of the proposed rule, a new estimate (n=338) was released in NMFS' draft and final 2022 SARs and has been

incorporated into this final rule. In addition, the total annual average observed North Atlantic right whale mortality was updated in the final SARs from 8.1 to 31.2. Total annual average observed North Atlantic right whale mortality during the period 2016 through 2020 was 8.1 animals and annual average observed fishery mortality was 5.7 animals. Numbers presented in this table (31.2 total mortality and 22 fishery mortality) are 2015 through 2019 estimated annual means, accounting for undetected mortality and serious injury. (Hayes *et al.*, 2023).

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All species that could potentially occur in the Project Area are included in Table 5 in Revolution Wind ITA application and discussed therein. While the majority of these species have been documented or sighted in southern New England (including off the coast of Rhode Island) in the past, for the species and stocks not listed in Table 2, NMFS considers it unlikely that their occurrence would overlap the activity in a manner that would result in harassment, due to their spatial distribution (*i.e.*, more northern or southern ranges) and/or the geomorphological characteristics of the underwater environment (*i.e.*, water depth in the development area). There are two pilot whale species, long-finned (*Globicephala melas*) and short-finned (*Globicephala macrorhynchus*), with distributions that overlap in the latitudinal range of the Project Area (Hayes *et al.*, 2023; Roberts *et al.*, 2016; Roberts *et al.*, 2023). Because it is difficult to differentiate between the two species at sea, sightings, and thus the densities calculated from them, are generally reported together as *Globicephala* spp. (Roberts *et al.*, 2016; Hayes *et al.*, 2023). However, based on the best available information, short-finned pilot whales occur in habitat that is both further offshore on the shelf break and further south than the project area (Hayes *et al.*, 2020). Therefore, NMFS assumes that any take of pilot whales would be of long-finned pilot whales. Similarly, in the Western North Atlantic, there are two morphologically and genetically distinct common bottlenose morphotypes, the Western North Atlantic Northern Migratory Coastal stock and the Western North Atlantic Offshore stock. The western North Atlantic offshore stock is primarily distributed along the outer shelf and slope from Georges Bank to Florida during spring and summer and has been observed in the Gulf of Maine during late summer and fall (Hayes *et al.*, 2020), whereas the northern migratory coastal stock is distributed along the coast between southern Long Island, New York, and Florida (Hayes *et al.*, 2018). Given their distribution, only the offshore stock is likely to occur in the Project Area and is the only stock included in this application.

A detailed description of the species likely to be affected by the Project, 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 proposed rule (87 FR 79072, December 23, 2022). Since that time, a new SAR (Hayes *et al.*, 2023) has become available for the North Atlantic right whale. Estimated abundance for the species declined from 368 to 338 and annual M/SI increased from 8.1 to 31.2. This large increase in annual serious injury/mortality is a result of NMFS including undetected annual M/SI in the total annual serious injury/mortality. The North Atlantic right whale population remains in decline, as described in the *North Atlantic Right Whale* species section below. We are not aware of any additional changes in the status of the species and stocks listed in Table 2; therefore, detailed descriptions are not provided here. Please refer to the proposed rule for these descriptions (87 FR 79072, December 23, 2022). Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Since the publication of the proposed rule, the following updates have occurred to the below species in regards to general information or their active UMEs.

North Atlantic Right Whale

In August 2023, NMFS released its final 2022 SARs, which updated the population estimate (N_{best}) of North Atlantic right whales from 368 to 338 individuals and the annual M/SI value from 8.1 to 31.2 due to the addition of estimated undetected mortality and serious injury, as described above, which had not been previously included in the SAR. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.*, 2023). Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be "human interaction," specifically from

entanglements or vessel strikes. Since publication of the proposed rule, the number of animals considered part of the UME has increased. As of September 11, 2023, there have been 36 confirmed mortalities (dead, stranded, or floaters), 0 pending mortalities, and 34 seriously injured free-swimming whales for a total of 70 whales. As of October 14, 2022, the UME also considers animals ($n=45$) with sublethal injury or illness (called "morbidity") bringing the total number of whales in the UME to 115. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event>.

Humpback Whale

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event was declared a UME in April 2017. Partial or full necropsy examinations have been conducted on approximately half of the 208 known cases (as of September 2023). Of the whales examined (approximately 90), about 40 percent had evidence of human interaction either from vessel strike or entanglement (refer to <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>). While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>.

Since December 1, 2022, the number of humpback strandings along the mid-Atlantic coast, from North Carolina to New York, has been elevated. In some cases, the cause of death is not yet

known; in others, vessel strike has been deemed the cause of death. As the humpback whale population has grown, they are seen more often in the Mid-Atlantic. These whales may be following their prey (small fish) which were reportedly close to shore in the 2022–2033 winter. Changing distributions of prey impact larger marine species that depend on them, and result in changing distribution of whales and other marine life. These prey also attract fish that are targeted by recreational and commercial fishermen, which increases the number of boats and amount of fishing gear in these areas. This nearshore movement increases the potential for anthropogenic interactions, particularly as the increased presence of whales in areas traveled by boats of all sizes increases the risk of vessel strikes.

Minke Whale

Since January 2017, a UME has been declared based on elevated minke whale mortalities detected along the Atlantic coast from Maine through South Carolina. As of September, 2023, a total of 158 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings have shown evidence of human interactions or infectious disease in several of the whales, but these findings are not consistent across all of the whales examined, so more research is needed. This UME has been declared non-active and is pending closure. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast>.

Phocid Seals

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event was declared a UME in July 2022. Preliminary testing of samples has found some harbor and gray seals positive for highly pathogenic avian influenza. While the UME is not occurring in the Project Area, the populations affected by the UME are the same as those potentially affected by the Project. Information on this UME is available online at: <https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast>.

The above event was preceded by a different UME, occurring from 2018–2020 (closure of the 2018–2020 UME is pending). Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire, and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of all species) occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: <https://www.fisheries.noaa.gov/new-england->

[mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along](https://www.fisheries.noaa.gov/mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

Table 3 -- Marine Mammal Hearing Groups (NMFS, 2018)

Hearing Group	Generalized Hearing Range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
High-frequency (HF) cetaceans (true porpoises, Kogia, river dolphins, cephalorhynchid, Lagenorhynchus cruciger & L. australis)	275 Hz to 160 kHz
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz
* Represents the generalized hearing range for the entire group as a composite (<i>i.e.</i> , 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 <i>et al.</i> , 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.

NMFS notes that in 2019a, Southall *et al.* recommended new names for hearing groups that are widely recognized. However, this new hearing group classification does not change the weighting functions or acoustic thresholds (*i.e.*, the weighting functions and thresholds in Southall *et al.* (2019a) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we will be adopting the updated Southall *et al.* (2019a) hearing group classification.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Project's specified activities have the potential to result in the harassment of marine mammals in the specified geographic region. The proposed rule (87 FR 79072, December 23, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Revolution Wind's project activities on marine

mammals and their habitat. While some new literature has been published since publication of the proposed rule (*e.g.*, Meyer-Gutbrod *et al.*, 2023), there is no new information that NMFS is aware of that changes the analysis in the proposed rule. The information and analysis included in the proposed rule is incorporated by reference into this final rule and is not repeated here; please refer to the notice of the proposed rule (87 FR 79072, December 23, 2022).

Estimated Take

As noted in the Changes From the Proposed to Final Rule section, NMFS has revised take estimates for several species based on our concurrence with comments received on the proposed rule and due to transcription and mathematical errors summing take estimates across activities for several species. These changes are described in detail in the sections below and, otherwise, the methodology for and number of estimated take has not changed since the proposed rule.

This section provides an estimate of the number of incidental takes authorized through this rulemaking, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Authorized takes would be primarily by Level B harassment, as use of the acoustic sources (*i.e.*, impact and vibratory pile driving, site characterization surveys, and UXO/MEC detonations) have the potential to result

in disruption of marine mammal behavioral patterns due to exposure to elevated noise levels. Impacts such as masking and TTS can contribute to behavioral disturbances. There is also some potential for auditory injury (Level A harassment) to occur in select marine mammal species incidental to the specified activities (*i.e.*, impact pile driving, vibratory pile driving, and UXO/MEC detonations). As described below, the larger distances to the PTS thresholds, when considering marine mammal weighting functions, demonstrate this potential. For mid-frequency hearing sensitivities, when thresholds and weighting and the associated PTS zone sizes are considered, the potential for PTS from the noise produced by the project is negligible. The required mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this project. Below we describe how the take numbers are estimated.

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas;

and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Marine Mammal Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the levels above which animals may incur different types of tissue damage (non-acoustic Level A harassment or mortality) from exposure to pressure waves from explosive detonation. Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed. A summary of all NMFS' thresholds can be found at (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>).

Level B harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability,

duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, other noises in the area) and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to re 1 μ Pa) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources (Table 4). Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may

result in changes in behavior patterns that would not otherwise occur.

Revolution Wind's construction activities include the use of continuous (*i.e.*, vibratory pile driving) and intermittent (*i.e.*, impact pile driving, pneumatic hammering, HRG acoustic sources) sources, therefore, the 120 and 160 dB re 1 μ Pa (rms) thresholds are applicable. NMFS notes there are separate explosive thresholds to account for Level B harassment from a single detonation per day and those are included in Table 5 below.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). Revolution Wind's project includes the use of both impulsive and non-impulsive sources.

These thresholds are provided in Table 4 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>.

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Table 4 -- Onset of Permanent Threshold Shift (PTS) (NMFS, 2018)

Hearing Group	PTS Onset Thresholds* (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1 $L_{p,0-pk,flat}$: 219 dB $L_{E,p, LF,24h}$: 183 dB	Cell 2 $L_{E,p, LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	Cell 3 $L_{p,0-pk,flat}$: 230 dB $L_{E,p, MF,24h}$: 185 dB	Cell 4 $L_{E,p, MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	Cell 5 $L_{p,0-pk,flat}$: 202 dB $L_{E,p,HF,24h}$: 155 dB	Cell 6 $L_{E,p, HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	Cell 7 $L_{p,0-pk,flat}$: 218 dB $L_{E,p,PW,24h}$: 185 dB	Cell 8 $L_{E,p,PW,24h}$: 201 dB
* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration. Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μPa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript “flat” is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (<i>i.e.</i>, 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (<i>i.e.</i>, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.		

Explosive sources—Based on the best available science, NMFS uses the acoustic and pressure thresholds indicated in Tables 5 and 6 to predict the onset of behavioral harassment, TTS, PTS, tissue damage, and mortality incidental to explosive detonations.

Given Revolution Wind would be limited to detonating one UXO/MEC per day, the TTS threshold is used to estimate the potential for Level B (behavioral) harassment (*i.e.*, individuals exposed above the TTS threshold may also be harassed by

behavioral disruption but we do not anticipate any impacts from exposure to UXO/MEC detonation below the TTS threshold would constitute behavioral harassment).

Table 5 -- PTS Onset, TTS Onset, for Underwater Explosives (NMFS, 2018)

Hearing Group	PTS Impulsive Thresholds (Level A harassment)	TTS Impulsive Thresholds (Level B harassment)	Behavioral Threshold (multiple detonations; Level B harassment) ¹
Low-Frequency (LF) Cetaceans	<i>Cell 1</i> $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	<i>Cell 2</i> $L_{pk,flat}$: 213 dB $L_{E,LF,24h}$: 168 dB	<i>Cell 3</i> $L_{E,LF,24h}$: 163 dB
Mid-Frequency (MF) Cetaceans	<i>Cell 4</i> $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	<i>Cell 5</i> $L_{pk,flat}$: 224 dB $L_{E,MF,24h}$: 170 dB	<i>Cell 6</i> $L_{E,MF,24h}$: 165 dB
High-Frequency (HF) Cetaceans	<i>Cell 7</i> $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	<i>Cell 8</i> $L_{pk,flat}$: 196 dB $L_{E,HF,24h}$: 140 dB	<i>Cell 9</i> $L_{E,HF,24h}$: 135 dB
Phocid Pinnipeds (PW) (Underwater)	<i>Cell 10</i> $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	<i>Cell 11</i> $L_{pk,flat}$: 212 dB $L_{E,PW,24h}$: 170 dB	<i>Cell 12</i> $L_{E,PW,24h}$: 165 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS/TTS onset.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 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, ANSI defines peak sound pressure as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the overall marine mammal generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

1 – Given Revolution Wind would be limited to detonating one UXO/MEC per day, the TTS threshold is used to estimate the potential for Level B (behavioral) harassment (*i.e.*, individuals exposed above the TTS threshold may also be harassed by behavioral disruption but we do not anticipate any impacts from exposure to UXO/MEC detonation below the TTS threshold would constitute behavioral harassment.

Additional thresholds for non-auditory injury to lung and gastrointestinal (GI) tracts from the blast shock wave and/or onset of high peak pressures are also relevant (at relatively

close ranges) (Table 6). These criteria have been developed by the U.S. Navy (DoN (U.S. Department of the Navy) 2017) and are based on the mass of the animal and the depth at which it is

present in the water column. Equations predicting the onset of the associated potential effects are included below (Table 6).

Table 6 -- Lung and G.I. Tract Injury Thresholds (DoN, 2017)

Hearing Group	Mortality (Severe lung injury)*	Slight Lung Injury*	G.I. Tract Injury
All Marine Mammals	<i>Cell 1</i> Modified Goertner model; Equation 1	<i>Cell 2</i> Modified Goertner model; Equation 2	<i>Cell 3</i> $L_{pk,flat}$: 237 dB

* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: Table C.9 from DoN (2017) based on adult and/or calf/pup mass by species).

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, ANSI defines peak sound pressure as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the overall marine mammal generalized hearing range.

Modified Goertner Equations for severe and slight lung injury (pascal-second)

Equation 1: $103M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

Equation 2: $47.5M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

M animal (adult and/or calf/pup) mass (kg) (Table C.9 in DoN, 2017)

D animal depth (meters)

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Below, we discuss the acoustic modeling, marine mammal density information, and take estimation for each of Revolution Wind’s construction activities. NMFS has carefully considered all information and analysis presented by Revolution Wind as well as all other applicable information and, based on the best available science, concurs that Revolution Wind’s estimates of the types and amounts of take for each species and stock are complete and accurate.

Marine Mammal Density and Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. As noted above, depending on the species and as described in the take estimation section for each activity, take estimates may be based on the Roberts *et al.* (2023) density estimates, marine mammal monitoring results from HRG surveys, or average group sizes.

Habitat-based density models produced by the Duke University

Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–2022 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.*, 2016a, 2016b, 2017, 2018, 2020, 2021a, 2021b, 2023), represent the best available information regarding marine mammal densities in the Project Area. More recently, these data have been updated with new

modeling results and include density estimates for pinnipeds (Roberts *et al.*, 2016b, 2017, 2018, 2023). Density data are subdivided into five separate raster data layers for each species, including: Abundance (density), 95 percent Confidence Interval of Abundance, 5 percent Confidence Interval of Abundance, Standard Error of Abundance, and Coefficient of Variation of Abundance.

Revolution Wind's initial densities and take estimates were included in the ITA application that was considered Adequate & Complete on February 28, 2022, in line with NMFS' standard ITA guidance (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/apply-incident-take-authorization>). However, on June 20, 2022, the Duke Marine Geospatial Ecology Laboratory released a new, and more comprehensive, set of marine mammal density models for the area along the East Coast of the United States (Roberts *et al.*, 2023). The differences between the new density data and the older data necessitated the use of updated marine mammal densities and, subsequently, revised marine mammal take estimates. This information was provided to NMFS as a memo (referred to as the Revised Density and Take Estimate Memo) on August 19, 2022 after continued discussion between Revolution Wind and NMFS and NMFS has considered it in this analysis. The Revised Density and Take Estimate Memo was made public on NMFS' website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy>) on August 26, 2022.

Immediately below, we describe observational data from monitoring

reports and average group size information, both of which are appropriate to inform take estimates for certain activities or species in lieu of density estimates. As noted above, the density and occurrence information type resulting in the highest take estimate was used, and the explanation and results for each activity are described in the specific activity subsections in the Modeling and Take Estimation section.

For some species, observational data from PSOs aboard HRG and geotechnical (GT) survey vessels indicate that the density-based exposure estimates may be insufficient to account for the number of individuals of a species that may be encountered during the planned activities. PSO data from HRG and GT surveys conducted in and near the Project Area from October 2018 through February 2021 (AIS-Inc., 2019; Bennett, 2021; Stevens *et al.*, 2021; Stevens and Mills, 2021) were analyzed to determine the average number of individuals of each species observed per vessel day. For each species, the total number of individuals observed (including the "proportion of unidentified individuals") was divided by the number of vessel days during which observations were conducted in 2018–2021 HRG surveys (407 vessel days) to calculate the number of individuals observed per vessel day, as shown in the final columns of Tables 7a and 7b in the Updated Density and Take Estimation Memo.

For other less-common species, the predicted densities from Roberts *et al.* (2023) are very low and the resulting density-based exposure estimate is less than a single animal or a typical group size for the species. In such cases, the mean group size was considered as an alternative to the density-based or PSO

data-based take estimates to account for potential impacts on a group during an activity. Mean group sizes for each species were calculated from recent aerial and/or vessel-based surveys as shown in Table 7.

The estimated monthly density of seals provided in Roberts *et al.* (2023) includes all seal species present in the region as a single guild. To split the resulting "seal" density-based take estimate by species (harbor and gray seals), the estimate was multiplied by the proportion of the combined abundance attributable to each species. In the proposed rule, seal take estimates were previously calculated by scaling the exposure estimates derived from a single "seal" guild density using proportions calculated from the range-wide abundance values in the NMFS stock assessment reports (87 FR 79072, December 23, 2022). To more accurately estimate take for each species for all activities in the final rule, Revolution Wind instead scaled the single seal guild take estimates using proportions calculated from the relative occurrence of each species reported in PSO monitoring reports for HRG surveys conducted in the Project Area from 2018–2021 (AIS-Inc., 2019; Bennett, 2021; Stevens *et al.*, 2021; Stevens and Mills, 2021) and more recent data collected during construction of the South Fork Wind Farm in 2023 (South Fork Wind 2023, unpublished data). In the combined dataset, there were 62 seal sightings recorded to the species level. Of those, 17 individuals were harbor seals (0.27 or 27 percent) and 45 were gray seals (0.73 or 73 percent). Revolution Wind used these proportions to recalculate the species-specific seal take shown in Tables 12, 16, 20, 25, and 26.

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Table 7 -- Average Marine Mammal Species Group Sizes Used in Take Estimate Calculations

Species	Individuals	Sightings	Mean Group Size	Source
North Atlantic Right Whale*	145	60	2.4	Kraus <i>et al.</i> (2016)
Blue Whale*	3	3	1.0	Palka <i>et al.</i> (2017)
Fin Whale*	155	86	1.8	Kraus <i>et al.</i> (2016)
Humpback Whale	160	82	2.0	Kraus <i>et al.</i> (2016)
Minke Whale	103	83	1.2	Kraus <i>et al.</i> (2016)
Sei Whale*	41	25	1.6	Kraus <i>et al.</i> (2016)
Sperm Whale*	208	138	1.5	Palka <i>et al.</i> (2017)
Atlantic Spotted Dolphin	1334	46	29.0	Palka <i>et al.</i> (2017)
Atlantic White-Sided Dolphin	223	8	27.9	Kraus <i>et al.</i> (2016)
Bottlenose Dolphin	259	33	7.8	Kraus <i>et al.</i> (2016)
Common Dolphin	2896	83	34.9	Kraus <i>et al.</i> (2016)
Pilot Whales	117	14	8.4	Kraus <i>et al.</i> (2016)
Risso's Dolphin	1215	224	5.4	Palka <i>et al.</i> (2017)
Harbor Porpoise	121	45	2.7	Kraus <i>et al.</i> (2016)
Seals (Harbor and Gray)	201	144	1.4	Palka <i>et al.</i> (2017)

* Denotes species listed under the Endangered Species Act.

The estimated exposure and take tables for each activity present the density-based exposure estimates, PSO-data derived take estimate, and mean group size for each species. The number of takes by Level B harassment Revolution Wind requested and NMFS authorizes is based on the largest of these three values. As mentioned previously, the amount of take by Level A harassment authorized is based strictly on density-based exposure modeling results, rounded up to the nearest whole number or group size, as appropriate. As described in the Comments and Responses section and based on specific recommendations by the Commission during the 45-day public comment period, NMFS is authorizing additional take for a subset of species for particular activities. Details are included in the following activity-specific sections.

Modeling and Take Estimation

Revolution Wind estimated potential density-based exposures in two separate ways, depending on the activity. For WTG and OSS monopile foundation installation, sophisticated sound and animal movement modeling was conducted to more accurately account for the movement and behavior of marine mammals and their exposure to the underwater sound fields produced during impact pile driving, as described below. For landfall construction activities, HRG surveys, and in-situ UXO/MEC disposal (*i.e.*, detonation), takes were estimated by multiplying the expected densities of marine mammals in the activity area(s) by the area of

water likely to be ensonified above harassment threshold levels in a single day (24-hour period). The result was then multiplied by the number of days on which the activity is expected to occur, resulting in a density-based exposure estimate for each activity. In addition to the sophisticated modeling conducted for WTG and OSS monopile foundation installation, this method was used to produce a take estimate for each species for comparison with the exposure-based estimate, PSO-data estimate, and group size. Again, in some cases, these results directly inform the take estimates while, in other cases, adjustments are made based on monitoring results or average group size.

Below, we describe, in detail, the approach used to estimate take, in consideration of the acoustic thresholds and appropriate marine mammal density and occurrence information described above for each of the four different activities (WTG/OSS foundation installation, UXO/MEC detonation, landfall construction activities, and HRG surveys). The activity-specific exposure estimates (as relevant to the analysis) and activity-specific take estimates are also presented, alongside the combined totals annually, across the entire 5-year project, and as the maximum take of marine mammals that could occur within any 1 year.

WTG and OSS Monopile Foundation Installation

Here, for WTG and OSS monopile foundation installation, we provide summary descriptions of the modeling

methodology used to predict sound levels generated from the Project with respect to harassment thresholds and potential exposures using animal movement, the density and/or occurrence information used to support the take estimates for this activity, and the resulting acoustic and exposure ranges, exposures, and authorized takes. Additional modeling details are available in the proposed rule **Federal Register** document (87 FR 79092, December 23, 2022).

In this section, we present Revolution Wind's acoustic and exposure estimates for installation of up to 79 WTG foundations and 2 OSS foundations, as requested by Revolution Wind.

The full installation parameters for each size monopile are described below. The two impact pile driving installation acoustic modeling scenarios are:

(1) 7/12-m diameter WTG monopile foundation: A total of 10,740 hammer strikes per pile modeled over 220 minutes (3.7 hours); and,

(2) 7/15-m diameter OSS foundation: A total of 11,564 hammer strikes per pile modeled over 380 minutes (6.3 hours).

Representative hammering schedules (Table 8), including increasing hammer energy with increasing penetration depth, were modeled because maximum sound levels usually occur during the last stage of impact pile driving, where the greatest resistance is typically encountered (Betke 2008). The hammering schedule includes a soft start, or a period of hammering at a reduced hammer energy (relative to full operating capacity).

Table 8 -- Hammer Energy Schedules for Monopile Installation Used in Source Modeling¹

Monopile foundations (7/12-m diameter)			OSS Foundations (7/15- m diameter)		
Hammer: IHC S-4000			Hammer: IHC S-4000		
Energy Level (kilojoule, kJ)	Strike Count	Pile Penetration Depth (m)	Energy Level (kilojoule, kJ)	Strike Count	Pile Penetration Depth
1,000	1,705	0-6	1,000	954	0-5
2,000	3,590	6-24	2,000	2,944	5-17
3,000	2,384	24-36	3,000	4,899	17-36
4,000	3,061	36-50	4,000	2,766	36-50
Total:	10,740	50	Total:	11,563	50

¹ - Modeled strike rate (min⁻¹) for both schedules = 50

Revolution Wind will install monopiles vertically to a maximum penetration depth of 50 m; therefore, the model includes this assumption. While pile penetration depth among the foundation positions might vary slightly, this value was chosen as a reasonable penetration depth for the purposes of acoustic modeling based on Revolution Wind's engineering designs. All modeling was performed assuming that only one pile is driven at a time (*i.e.*, Revolution Wind will not conduct concurrent monopile installations), up to three WTG foundations will be installed per day, and no more than one OSS foundation will be installed per day.

Sound fields produced during impact pile driving were modeled by first characterizing the sound signal produced during pile driving using the industry standard GRLWEAP (wave equation analysis of pile driving) model and JASCO Applied Sciences' (JASCO) Pile Driving Source Model (PDSM). We provide a summary of the modelling effort below but the full JASCO modeling report can be found in Section 6 and Appendix A of Revolution Wind's ITA application (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean->

wind-lcc-construction-revolution-wind-wind-energy-facility).

Underwater sound propagation (*i.e.*, transmission loss) as a function of range from each source was modeled using JASCO's Marine Operations Noise Model (MONM) for multiple propagation radials centered at the source to yield three-dimensional (3D) transmission loss fields in the surrounding area. The MONM computes received per-pulse SEL for directional sources at specified depths.

MONM uses two separate models to estimate transmission loss. At frequencies less than 2 kHz, MONM computes acoustic propagation via a wide-angle parabolic equation (PE) solution to the acoustic wave equation based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) modified to account for an elastic seabed. MONM-RAM incorporates bathymetry, underwater sound speed as a function of depth, and a geo-acoustic profile based on seafloor composition, and accounts for source horizontal directivity. The PE method has been extensively benchmarked and is widely employed in the underwater acoustics community, and MONM-RAM's predictions have been validated against experimental

data in several underwater acoustic measurement programs conducted by JASCO. At frequencies greater than 2 kHz, MONM accounts for increased sound attenuation due to volume absorption at higher frequencies with the widely used BELLHOP Gaussian beam ray-trace propagation model. Both propagation models account for full exposure from a direct acoustic wave, as well as exposure from acoustic wave reflections and refractions (*i.e.*, multi-path arrivals at the receiver).

Two WTG and three OSS locations within the Lease Area were selected for acoustic modeling to provide representative propagation conditions and sound fields (see Figure 2 in Küsel *et al.*, 2021). The two WTG locations were selected to represent the relatively shallow (36.8 m) northwest section of the Lease Area to the somewhat deeper (41.3 m) southeast section. The three potential OSS locations (of which only two will be used to install the two OSS foundations) selected occupy similar water depths (33.7, 34.2, and 34.4 m). The acoustic propagation fields applied to exposure modeling (described below) were conservatively based on the WTG (1 of 2) and OSS (1 of 3) locations resulting in the largest fields.

The model also incorporated two different sound velocity profiles related to *in-situ* measurements of temperature, salinity, and pressure within the water column to account for variations in the acoustic propagation conditions between summer (May–November) and winter (December only).

Next, Revolution Wind modeled the sound field produced during impact pile driving by incorporating the results of the source level modeling into an acoustic propagation model. The sound propagation model incorporated site-specific environmental data that considers bathymetry, sound speed in the water column, and seabed geoaoustics in the construction area.

Revolution Wind estimated both acoustic ranges and exposure ranges. Acoustic ranges represent the distance to a harassment threshold based on sound propagation through the environment (*i.e.*, independent of any receiver) while exposure range represents the distance at which an animal can accumulate enough energy to exceed a Level A harassment threshold in consideration of how it moves through the environment (*i.e.*, using movement modeling). In both cases, the sound level estimates are calculated from 3D sound fields and then, at each horizontal sampling range, the maximum received level that occurs within the water column is used as the received level at that range. These maximum-over-depth ($R_{\max}$) values are then compared to predetermined threshold levels to determine acoustic and exposure ranges to Level A harassment and Level B harassment zone isopleths. However, the ranges to a threshold typically differ among radii from a source, and might not be continuous along a radii because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. To minimize the influence of these inconsistencies, 5 percent of the farthest such footprints were excluded from the model data. The resulting range, $R_{95\%}$, was chosen to identify the area over which marine mammals may be exposed above a given threshold, because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified threshold. The difference between $R_{\max}$ and $R_{95\%}$ depends on the source directivity and the heterogeneity of the acoustic environment. $R_{95\%}$ excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone. For purposes of calculating Level A

harassment take, Revolution Wind applied exposure $R_{95\%}$ ranges, not acoustic $R_{95\%}$ ranges, to estimate take and determine mitigation distances for the reasons described below.

In order to best evaluate the SEL_{cum} harassment thresholds for PTS, it is necessary to consider animal movement, as the results are based on how sound moves through the environment between the source and the receiver. Applying animal movement and behavior within the modeled noise fields provides the exposure range, which allows for a more realistic indication of the distances at which PTS acoustic thresholds are reached that considers the accumulation of sound over different durations (note that in all cases the distance to the peak threshold is less than the SEL-based threshold).

As described in Section 2.6 of Appendix A of Revolution Wind's ITA application, for modeled animals that have received enough acoustic energy to exceed a given Level A harassment threshold, the exposure range for each animal is defined as the closest point of approach (CPA) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The resulting exposure range for each species is the 95th percentile of the CPA distances for all animals that exceeded threshold levels for that species (termed the 95 percent exposure range ($ER_{95\%}$)). The $ER_{95\%}$ ranges are species-specific rather than categorized only by any functional hearing group, which allows for the incorporation of more species-specific biological parameters (*e.g.*, dive durations, swim speeds, *etc.*) for assessing the impact ranges into the model. Furthermore, because these $ER_{95\%}$ ranges are species-specific, they can be used to develop mitigation monitoring or shutdown zones.

Sound exposure modeling, like JASCO's JASMINE, involves the use of a 3D computer simulation in which simulated animals (animats) move through the modeled marine environment over time in ways that are defined by the known or assumed movement patterns for each species derived from visual observation, animal borne tag, or other similar studies. The predicted 3D sound fields (*i.e.*, the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation. The precise location of animats (and their pathways) are not known prior to a project, therefore, a repeated random sampling technique (Monte Carlo) is

used to estimate exposure probability with many animats and randomized starting positions. The probability of an animat starting out in or transitioning into a given behavioral state can be defined in terms of the animat's current behavioral state, depth, and the time of day. In addition, each travel parameter and behavioral state has a termination function that governs how long the parameter value or overall behavioral state persists in the simulation.

The sound field produced by the activity, in this case impact pile driving, is then added to the modeling environment at the location and for the duration of time anticipated for one or more pile installations. At each time step in the simulation, each animat records the received sound levels at its location resulting in a sound exposure history for each animat. These exposure histories are then analyzed to determine whether and how many animats (*i.e.*, simulated animals) were exposed above harassment threshold levels. Finally, the density of animats used in the modeling environment, which is usually much higher than the actual density of marine mammals in the activity area so that the results are more statistically robust, is compared to the actual density of marine mammals anticipated to be in or near the Lease Area.

The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. Scaling the probability density function by the real-world densities for an animal results in the mean number of animats expected to be exposed over the duration of the project. Due to the probabilistic nature of the process, fractions of animats may be predicted to exceed threshold. If, for example, 0.1 animats are predicted to exceed threshold in the model, that is interpreted as a 10-percent chance that one animat will exceed a relevant threshold during the project, or equivalently, if the simulation were re-run 10 times, 1 of the 10 simulations would result in an animat exceeding the threshold. Similarly, a mean number prediction of 33.11 animats can be interpreted as re-running the simulation where the number of animats exceeding the threshold may differ in each simulation but the mean number of animats over all of the simulations is 33.11. A portion of an individual marine mammal cannot be taken during a project, so it is common practice to round mean number animat exposure values to integers using standard rounding methods. However, for low-probability events it is more precise to

provide the actual values. For this reason, mean number values are not rounded. A more detailed description of this method is available in Appendix A of Revolution Wind's application.

For the Project, JASMINE animal movement model was used to predict both the $ER_{95\%}$ ranges and the probability of marine mammal exposure to impact pile driving sound generated by monopile installation. Sound fields generated by the acoustic propagation modeling described above were input into the JASMINE model, and animats were programmed based on the best available information to "behave" in ways that reflect the behaviors of the 16 marine mammal species expected to occur in or near the Lease Area. The various parameters for forecasting realistic marine mammal behaviors (e.g., diving, foraging, surface times, etc.) are determined based on the available literature (e.g., tagging studies), or by extrapolating from a species expected to behave similarly (e.g., fin and sei whales). More information regarding modeling parameters can be found Appendix A of the ITA application.

The mean numbers of animats that may be exposed to noise exceeding acoustic thresholds were calculated based on installation of 1, 2, or 3 WTG foundations and, separately, 1 or 2 OSS foundations in 24 hours. Animats were modeled to move throughout the 3D sound fields produced by each construction schedule for the entire construction period. For PTS exposures, both SPL_{peak} and SPL_{cum} were calculated for each species based on the corresponding acoustic criteria. Once an animat is taken within a 24-hour period, the model does not allow it to be taken a second time in that same period but rather resets the 24-hour period on a sliding scale across 7 days of exposure. For Level A harassment, an individual animat's exposure levels are summed over that 24-hour period to determine its total received energy, and then compared to the appropriate PTS threshold. Takes by behavioral disturbance are predicted when an animat is modeled to come within the area ensounded by sound levels exceeding the corresponding Level B harassment thresholds. Please note that animal aversion was not incorporated into the JASMINE model runs that were

the basis for the take estimate for any species. See Appendix A of the ITA application for more details on the JASMINE modeling methodology.

Revolution Wind will employ a noise abatement system during all impact pile driving of monopiles. Noise abatement systems, such as bubble curtains, are sometimes used to decrease the sound levels radiated from a source. In modeling the sound fields produced by Revolution Wind's planned activities, hypothetical broadband attenuation levels of 0 dB, 6 dB, 10 dB, 12 dB, 15 dB, and 20 dB for were modeled to gauge effects on the ranges to threshold isopleths given these levels of attenuation. Although six attenuation levels were evaluated, Revolution Wind anticipates that the noise abatement system ultimately chosen will be capable of reliably reducing source levels by 10 dB; therefore, modeling results assuming 10-dB attenuation are carried forward in this analysis. Additional information related to Revolution Wind's use of noise abatement systems is provided in the Mitigation and Monitoring and Reporting sections.

As described more generally above, updated Roberts *et al.* (2023) habitat-based marine mammal density models provided the densities used to inform and scale the marine mammal exposure estimates produced by the JASMINE model. For monopile installation, specifically, mean monthly densities for all species were calculated by first selecting density data from 5 x 5 km (3.1 x 3.1 mile) grid cells (Roberts *et al.*, 2016; Roberts *et al.* (2023) both within the Lease Area and out to 10 km (6.2 mi) from the perimeter of the Lease Area. This is a reduction from the 50 km (31 mi) perimeter used in the ITR application. The relatively large area selected for density estimation encompasses and extends approximately to the largest estimated exposure acoustic range ($ER_{95\%}$) to the isopleth corresponding to Level B harassment, assuming no noise attenuation) (see Tables 19 and 20 of the ITA application) for all hearing groups using the unweighted threshold of 160 dB re 1 μ Pa (rms). Please see Figure 6 in Revolution Wind's Updated Density and Take Estimation Memo for an example of a density map showing

Roberts and Halpin (2022) density grid cells overlaid on a map of the Lease Area.

Although there is some uncertainty in the monopile foundation installation schedule, Revolution Wind anticipates that it could occur over approximately 1 month provided good weather conditions and no unexpected delays. The exposure calculations were thus conducted using marine mammal densities from the month with the highest average density estimate for each species, based on the assumption that all 79 WTG and 2 OSS foundations will be installed in the highest density month (78 WTG monopile (3 per day for 26 days), 1 WTG monopile (1 per day for 1 day) and 2 OSS monopile foundations (1 per day for 2 days)). Due to differences in the seasonal migration and occurrence patterns, the month selected differs for each species. The estimated monthly density of seals provided in Roberts *et al.* (2023) includes all seal species present in the region as a single guild. To split the resulting "seal" density-based exposure estimate by species (harbor and gray seals), the estimate was multiplied by the proportion of the combined abundance attributable to each species. Specifically, the SAR N_{best} abundance estimates (Hayes *et al.*, 2023) for the two species (gray seal = 27,300, harbor seal = 61,336; total = 88,636) were summed and divided the total by the estimate for each species to get the proportion of the total for each species (gray seal = 0.308; harbor seal = 0.692). The total estimated exposure value based on the pooled seal density provided by Roberts *et al.* (2023) was then multiplied by these proportions to get the species-specific exposure estimates. Monthly densities were unavailable for pilot whales, so the annual mean density was used instead. The blue whale density was considered too low to be carried into exposure estimation so the amount of blue whale take Revolution Wind requested (see Estimated Take) is instead based on group size. Table 9 shows the maximum average monthly densities by species that were incorporated in exposure modeling to obtain conservative exposure estimates.

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Table 9 -- Maximum Monthly Marine Mammal Densities (Animals Per Km²) Within and Around the Lease Area Out To 10 Km (6.2 Mi)

Marine Mammal Species	Highest Density
North Atlantic right whale ¹	0.0026 (December)
Blue whale ^{1,2}	—
Fin whale ¹	0.0029 (July)
Humpback whale	0.0021 (May)
Minke whale	0.0174 (May)
Sei whale ¹	0.0013 (May)
Sperm whale ¹	0.0004 (August)
Atlantic spotted dolphin	0.0005 (October)
Atlantic white-sided dolphin	0.0174 (May)
Bottlenose dolphin	0.0091 (August)
Common dolphin	0.0743 (December)
Pilot whales ³	0.0007 (annual)
Risso's dolphin	0.0017 (December)
Harbor porpoise	0.0515 (December)
Seals (Harbor and Gray)	0.2225 (May)

1 – Listed as Endangered under the Endangered Species Act.

2 – Exposure modeling for the blue whale was not conducted because impacts to those species approach zero due to their low predicted densities in the Project; therefore, were excluded from all quantitative analyses and tables based on modeling results.

3 – Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, therefore, NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

For the exposure analysis, it was assumed that a maximum of three WTG monopile foundations may be driven in 24 hours, presuming installations are permitted to continue in darkness and would occur in the highest density month for any species. It is unlikely that this installation rate will be consistently possible throughout the WTG foundation construction phase, but this scenario was considered to have the greatest potential impact on marine mammals and was, therefore, carried forward into take estimation. Exposure ranges ($ER_{95\%}$) to the Level A SEL_{cum} thresholds and Level B SPL_{rms} threshold resulting from animal exposure modeling for installation of one (for comparative purposes) or three (assumed for exposure modeling) WTG

foundations and one OSS foundation per day (assumed for exposure modeling), assuming 10-dB of attenuation, for the summer (when Revolution Wind intends to install the majority of monopile foundations) and winter are shown in Tables 10 and 11. Exposure ranges were also modeled assuming installation of two WTG foundations per day (not shown here); see Appendix A of Revolution Wind's ITA application for those results. Although only allowed with NMFS approval in the case of unforeseen circumstances, any activities conducted in the winter (December) will utilize monitoring and mitigation measures based on the exposure ranges ($ER_{95\%}$) calculated using winter sound speed profile, which are longer than $ER_{95\%}$

modeled using a summer sound speed profile. Revolution Wind does not plan to install two OSS foundations in a single day due to the distance between the OSS locations coupled with the longer installation time for the larger diameter monopile (7/15-m versus 7/12-m diameter WTG monopile); therefore, modeling results are provided for installation of a single OSS foundation per day. Meaningful differences (greater than 500 m) between species within the same hearing group occurred for low-frequency cetaceans, so exposure ranges are shown separately for those species (Tables 10 and 11). For mid-frequency cetaceans and pinnipeds, the largest value among the species in the hearing group was selected to be included in Tables 10 and 11.

Table 10 -- Exposure Ranges¹ (ER_{95%}), in Kilometers, to Level A (SEL_{cum}) Thresholds for Installation of One and Three 7/12-m WTG Monopiles (10,740 Strikes) and One 7/15-m OSS Monopile (11,564 Strikes) During Summer and Winter Assuming 10-dB Attenuation

Hearing Group	SEL _{cum} Threshold (dB re 1 μ Pa ² ·s)	WTG Monopile (1 pile/day)		WTG Monopile (3 piles/day)		OSS Monopile (1 pile/day)	
		Summer	Winter	Summer	Winter	Summer	Winter
Low-frequency	183						
North Atlantic Right Whale*	-	1.85	3.42	1.93	3.97	1.25	2.66
Fin Whale*	-	2.15	3.53	2.23	4.38	1.57	2.68
Humpback Whale	-	2.46	4.88	2.66	6.29	1.79	3.56
Minke Whale	-	1.32	3.03	1.51	3.45	0.94	1.81
Sei Whale*	-	1.42	2.82	1.81	3.67	1.22	2.05
Mid-frequency	185	0	0.01	0.02	0.02	0	0
High-frequency	155	1.28	2.29	1.34	2.33	0.83	1.25
Phocid pinnipeds	185	0.6	0.73	0.44	0.81	0.37	0.37

* Denotes species listed under the Endangered Species Act.

1 - Exposure ranges are a result of animal movement modeling.

Table 11 -- Exposure Ranges¹ (ER_{95%}), in Kilometers, to the Level B (SPL_{rms}) Isopleth for Installation of One and Three 7/12-m WTG Monopiles or One 7/15-m OSS Monopile During Summer and Winter Assuming 10-dB Attenuation

Hearing Group	WTG Monopile (1 pile/day)		WTG Monopile (3 piles/day)		OSS Monopile (1 pile/day)	
	Summer	Winter	Summer	Winter	Summer	Winter
North Atlantic Right Whale*	3.70	4.06	3.67	3.95	3.51	3.75
Fin Whale*	3.72	4.05	3.76	4.09	3.62	3.88
Humpback Whale	3.75	4.15	3.72	4.11	3.61	3.87
Minke Whale	3.71	4.07	3.63	4.07	3.56	3.84
Sei Whale*	3.66	4.11	3.67	4.02	3.58	3.92
Mid-frequency	3.69	4.07	3.67	4.03	3.63	3.81
High-frequency	3.71	4.00	3.62	4.03	3.50	3.91
Phocid pinnipeds	3.79	4.21	3.80	4.23	3.75	4.02

* Listed as Endangered under the Endangered Species Act.

¹ - Exposure ranges are a result of animal movement modeling.

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As mentioned previously, acoustic ranges (R_{95%}) were also modeled. These thresholds were used to define the Level B harassment threshold (160 dB rms) for all species (see Mitigation) for WTG and OSS foundation installation in summer and winter (in parentheses):

- WTG monopile: 3,833 m (4,271 m)
- OSS monopile: 4,100 m (4,698 m)

Finally, the results of marine mammal exposure modeling, assuming 10-dB attenuation, for installation of 79 WTG

and 2 OSS monopile foundations are shown in columns 2 and 3 of Table 12; these values assume that all 81 foundations (79 WTGs and 2 OSSs) will be installed in a single year and form the basis for the amount of take requested by Revolution Wind and authorized by NMFS. Columns 4 and 5 show what the take estimates would be if the PSO data or average group size, respectively, were used to inform the take by Level B harassment in lieu of the density and exposure modeling. The last

two columns represent the take, by Level A harassment (PTS) and Level B harassment, respectively, NMFS is authorizing. The Level A exposure estimates shown in Table 12 are based only on the Level A SEL_{cum} threshold and associated exposure ranges (Table 10), as the very short distances to isopleths based on the Level A SPL_{pk} thresholds (Table 14 in the ITA application) resulted in no meaningful likelihood of take from exposure to those sound levels. The Level B

exposure estimates shown in Table 12 are based on the exposure ranges resulting from sound exposure modeling using the unweighted 160 dB SPL_{rms} threshold (Table 11). For each species, the number of takes, by Level B harassment, in the last column of Table 12 is based on the highest of the three estimates shown in columns 3 (Exposure Modeling Take Estimates—Level B), 4 (PSO Date Take Estimate), and 5 (Mean Group Size).

Revolution Wind requested, and NMFS proposed to authorize, Level A harassment (PTS) take for humpback whales (n=7) incidental to foundation installation because, for this species only, the shutdown zone is smaller (summer = 2,300 m; winter = 4,400 m) than the PTS Level A harassment ER_{95%} distance (summer = 2,660 m; winter = 6,290 m), thus humpback whales could be exposed to noise levels capable of inducing PTS before pile driving is shutdown. However, based on consideration of a comment from the Commission, NMFS is also authorizing a portion of the model-estimated Level A harassment (PTS) take of additional species. Revolution Wind must monitor extensive zones prior to and during pile driving during both daytime and nighttime pile driving, if it occurs.

Although the combination of PSOs using promising new alternative visual monitoring equipment and PAM operators conducting extensive acoustic monitoring is expected to facilitate detection of marine mammals in the clearance and shutdown zones during daytime and nighttime (if it occurs) pile installation, it's possible that a marine mammal may enter the shutdown zone undetected. This situation is more likely for species that are challenging to detect (particularly in higher sea states), including minke whales, harbor porpoises, gray seals, and harbor seals. As indicated in the proposed rule, modeling resulted in the following number of Level A harassment (PTS) takes incidental to foundation installation for the indicated species: 7 fin whales, 3 sei whales, 61 minke whales, 321 harbor porpoises, 5 gray seals, and 32 harbor seals. Although some of these species are more difficult to detect, particularly at the farthest extent of the shutdown zones (*e.g.*, minke whale: summer = 2,300 m, winter = 4,400 m; harbor porpoise: summer = 1,400 m, winter = 2,400 m), NMFS considers it unlikely that 7 fin whales, 61 minke whales, 321 harbor porpoises, and 32 harbor seals would enter the Level A harassment (PTS) zone

undetected and remain there for an extended duration, given the extensive monitoring and mitigation (*e.g.*, large clearance zones) NMFS is requiring Revolution Wind to implement. Thus, for these species, NMFS is authorizing 20 percent of the model-estimated Level A harassment (PTS) take proposed for authorization (rounded up to the nearest whole number) incidental to foundation installation, which is equal to 2 fin whales, 13 minke whales, 65 harbor porpoises, and 7 harbor seals. Additionally, NMFS is authorizing take, by Level A harassment, of 7 humpback whales (included in the proposed rule), 3 sei whales, and 5 gray seals, all of which are based solely on the density-based exposure estimate resulting from animal movement modeling presented in the proposed rule. We did not apply a 20 percent reduction to density-based exposure estimates for sei whales and harbor seals given the estimates are low in number and similar to a group size.

Although model estimated, Level A harassment of 18 North Atlantic right whales is not anticipated or authorized, given the extensive mitigation and monitoring measures prescribed to avoid this level of harassment for North Atlantic right whales.

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Table 12 -- Estimated Take, By Level A Harassment and Level B Harassment, for 79 (7/12-m) WTG and Two (7/15-m) OSS Monopile Foundation Installations Assuming 10-dB Attenuation

Species	Exposure Modeling Take Estimates ¹		PSO Data Take Estimate	Mean Group Size	Authorized Annual Level A Take	Authorized Annual Level B Take
	Level A (SPL _{cum})	Level B (SPL _{rms})				
North Atlantic Right Whale*	17.5	21.6	1.4	2.4	0	22
Blue Whale*	N/A	N/A	-	1.0	0	1
Fin Whale*	6.4	14.9	15.8	1.8	2 ²	16
Humpback Whale	6.5	11.5	47.1	2.0	7	48
Minke Whale	60.9	191.2	5.8	1.2	13 ²	192
Sei Whale*	2.5	7.8	0.4	1.6	3 ³	8
Sperm Whale*	0.0	2.8	-	1.5	0	3
Atlantic Spotted Dolphin	0.0	0.0	-	29.0	0	29
Atlantic White-Sided Dolphin	0.1	199.5	4.6	27.9	0	200
Bottlenose Dolphin	0.0	68.8	51.4	7.8	0	69
Common Dolphin	0.0	1,327.6	1,308.9	34.9	0	1,328
Long-finned pilot whales ⁴	0.0	5.5	-	8.4	0	9
Risso's Dolphin	0.0	15.5	3.6	5.4	0	16
Harbor Porpoise	320.9	661.0	1.3	2.7	65 ²	661
Gray Seal	4.9	731.1	3.5	1.4	5 ³	732
Harbor Seal	32	328.0	4.6	1.4	7 ²	329

* Denotes species listed under the Endangered Species Act.

1 - Exposure estimates assume all piles will be installed in a single year.

2 - NMFS considers it unlikely that 7 fin whales, 61 minke whales, 321 harbor porpoises, and 32 harbor seals would enter their respective Level A harassment (PTS) zone undetected and remain there for an extended period of time, given the extensive monitoring and mitigation (e.g., large clearance zones) NMFS is requiring Revolution Wind to implement. Thus, NMFS is authorizing 20 percent of the model-estimated Level A harassment (PTS) (rounded to the nearest whole number).

3 - NMFS is authorizing take, by Level A harassment, of 3 sei whales and 5 gray seals, both of which are based solely on the density-based exposure estimates (rounded up to the nearest whole number) resulting from animal movement modeling. We did not apply a 20 percent reduction to density-based exposure estimates for these species given the exposure estimates are low in number and/or similar to a group size.

4 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area; therefore, NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

UXO/MEC Detonations

To assess the impacts from UXO/MEC detonations, JASCO conducted acoustic modeling based on previous underwater acoustic assessment work that was performed jointly between NMFS and the United States Navy. JASCO evaluated the effects thresholds for TTS, PTS, non-auditory injury, and mortality based on the appropriate metrics to use as indicators of disturbance and injury: (1) peak pressure level; (2) SEL; and (3) acoustic impulse. Charge weights of 2.3 kg (5.1 pounds (lbs)), 9.1 kg (20.1 lbs), 45.5 kg (100.3 lbs), 227 kg (500 lbs), and 454 kg (1,000.9 lbs), which is the largest charge the Navy considers for the purposes of its analyses (see the Description of the Specified Activities section in the proposed rule), were modeled to determine the ranges to mortality, gastrointestinal injury, lung injury, PTS, and TTS thresholds. These charge weights were modeled at four different locations and associated water depths in the Project Area (12 m (Site S1), 20 m (Site S2), 30 m (Site S3), and 45 m (Site S4)). The sites were deemed to be representative of both the RWECD (S1 and S2) and the Lease Area (S3 and S4).

Here, we present distances to PTS and TTS thresholds for all UXO/MEC charge weights. In the proposed rule, we only described the distances to thresholds for the largest E12 charge weight. However, as already described, Revolution Wind will be able to identify and mitigate at the relevant distances for each specific charge weight, so we have incorporated the maximum values for each size herein. Because of implementation of mitigation and monitoring measures, the potential for mortality and non-auditory injury is low and Revolution Wind did not request and we are not authorizing take by mortality or non-auditory injury. All modeling results, including mortality and non-auditory injury, can be found in Appendix B of the application.

UXOs/MECs were modeled at the locations listed below. The locations for

these modeling sites are shown in Figure 1 of Appendix B in Revolution Wind's application:

- Shallow water RWECD: Site S1; In the channel within Narragansett Bay (12 m depth);
- Shallow water RWECD: Site S2; Intermediate waters outside of Narragansett Bay (20 m depth);
- Shallow water Lease Area: Site S3; Shallower waters in the southern portion of the Hazard Zone 2 area (30 m depth);
- Deeper water Lease Area: Site S4; Deeper waters in northern portion of the Hazard Zone 2 area (45 m depth).

For the RWECD, JASCO selected the largest distances to the PTS and TTS isopleths between S1 and S2 to carry forward for take estimation (Tables 45 and 47 in ITA application). This same approach was used to determine the largest distances to these isopleths for the Lease Area (S3 and S4; Tables 46 and 48 in ITA application). The distances were not always consistently larger for one site versus the other, so the results in Tables 45 and 47 in the ITA application represent a mixture of S1 and S2 for the RWECD and Tables 46 and 48 represent a mixture of results for S3 and S4 for the Lease Area. For all species, the distance to the SEL threshold isopleth exceeded that for the SPL peak isopleth (Table 29 in Appendix B of the ITA application). Model results for all sites and all charge weights can be found in Appendix B of Revolution Wind's application. Further, Revolution Wind presented results for both mitigated and unmitigated scenarios in the ITA application and the August 2022 Updated Densities and Takes Estimation Memo; however, Revolution Wind has committed to use a noise abatement system capable of 10-dB attenuation (minimally a double bubble curtain) during all detonations. As a result, the Updated Densities and Take Estimation Memo mitigated UXO/MEC scenario is the one carried forward into exposure and take estimation here. Tables 13 and 14 provide the largest

ranges $R_{95\%}$ among all sites (S1–S4) to the SEL-based PTS-Onset and SEL-based TTS-Onset, assuming 10-dB attenuation. Additional information can be found in JASCO's UXO/MEC report and the Revised Density and Take Estimate Memo on NMFS' website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy>).

NMFS notes that the more detailed results for the mortality and non-auditory injury analysis for marine mammals for onset gastrointestinal injury, onset lung injury, and onset of mortality can be found in Appendix B of the ITA application, which can be found on NMFS' website. NMFS concurs with Revolution Wind's analysis and neither expects nor authorizes any non-auditory injury, serious injury, or mortality of marine mammals from UXO/MEC detonation. The modeled distances to the mortality threshold for all UXO/MECs sizes for all animal masses are small enough that they can be effectively monitored (*i.e.*, 5–353 m; see Tables 35–38 in Appendix B of Revolution Wind's application) and these types of impacts avoided, given the robust mitigation and monitoring measures required. The modeled distances to non-auditory injury thresholds range from 5–648 m (see Tables 30–34 in Appendix B of the application). Revolution Wind will be required to conduct extensive monitoring using both PSOs and PAM operators and clear an area of marine mammals prior to detonating any UXO/MEC. Given that Revolution Wind will be employing multiple platforms to visually monitor marine mammals as well as conducting passive acoustic monitoring, it is reasonable to assume that marine mammals will be reliably detected within approximately 660 m of the UXO/MEC being detonated and mortality or non-auditory injury is not likely to occur.

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Table 13 -- SEL-based R_{95%} PTS-Onset Ranges, in Meters, from all Site Modeled During UXO/MEC Detonation by Charge Weight, Assuming 10-dB Sound Attenuation

Marine Mammal Hearing Group	2.3 kg (5.1 lbs)		9.1 kg (20.1 lbs)		45.5 kg (100.3 lbs)		227 kg (500 lbs)		454 kg (1,000.9 lbs)	
	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}
LFC	632	552	1,230	982	2,010	1,730	3,370	2,970	4,270	3,780
MFC	<50	<50	79	75	175	156	419	337	535	461
HFC	2,100	1,820	3,020	2,590	4,400	3,900	6,130	5,400	6,960	6,200
PP	192	182	413	357	822	690	1,410	1,220	1,830	1,600

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds

Table 14 -- SEL-based R_{95%} TTS-Onset Ranges, in Meters, from all Site Modeled During UXO/MEC Detonation by Charge Weight, Assuming 10-dB Sound Attenuation

Marine Mammal Hearing Group	2.3 kg (5.1 lbs)		9.1 kg (20.1 lbs)		45.5 kg (100.3 lbs)		227 kg (500 lbs)		454 kg (1,000.9 lbs)	
	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}
LFC	3,140	2,820	5,230	4,680	8,160	7,490	11,700	10,500	13,500	11,900
MFC	535	453	910	773	1,520	1,240	2,400	2,120	2,930	2,550
HFC	6,920	6,160	8,970	8,000	11,300	10,300	14,600	12,900	15,600	14,100
PP	1,730	1,470	2,710	2,350	4,340	3,820	6,640	5,980	7,820	7,020

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds

Table 15 -- Maximum of Average Monthly Marine Mammal Densities (Individuals/km²) Within 15 Km of the RWECD and Lease Area (May-November), and Associated Month

Species	RWECD		Lease Area	
	Maximum Density	Maximum Density Month	Maximum Density	Maximum Density Month
North Atlantic right whale*	0.0009	May	0.0019	May
Blue whale*	0.0000	Annual	0.0000	Annual
Fin whale*	0.0015	July	0.0029	July
Humpback whale	0.0014	May	0.0020	May
Minke whale	0.0110	May	0.0167	May
Sei whale*	0.0007	May	0.0012	May
Sperm whale*	0.0002	August	0.0004	August
Atlantic spotted dolphin	0.0002	October	0.0007	October
Atlantic white-sided dolphin	0.0086	May	0.0175	May
Bottlenose dolphin	0.0047	July	0.0093	August
Common dolphin	0.0389	November	0.0762	September
Pilot whales ¹	0.0001	Annual	0.0007	Annual
Risso's dolphin	0.0003	November	0.0006	November
Harbor porpoise	0.0218	May	0.0392	May
Grey Seal	0.0769	May	0.0692	May
Harbor Seal	0.1728	May	0.1554	May

* Denotes species listed under the Endangered Species Act.

1 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

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To estimate the maximum ensonified zones that could result from UXO/MEC detonations, the R_{95%} to PTS and TTS threshold isopleths within the RWECD (S1 and S2; Tables 47 and 47 in ITA application), respectively, were used as radii to calculate the area of a circle ($\pi \times r^2$ where r is the range to the threshold level) for each marine mammal hearing group. The results represent the largest area potentially ensonified above threshold levels from a single detonation within the RWECD. The same

method was used to calculate the maximum ensonified area from a single detonation in the Lease Area (S3 and S4), based on the distances in Tables 46 and 48 in the ITA application. Again, modeling results are presented here for mitigated (*i.e.*, using a noise abatement system) detonations of UXO/MECs. The results for unmitigated detonations can be found Tables 44–48 in the ITA application.

As mentioned previously, Revolution Wind used the Duke Habitat-based Density Models to determine species-

specific densities for inclusion in estimation of take incidental to UXO/MEC detonation. To avoid detonations of UXO/MECs during periods when North Atlantic right whale densities are highest in and near the Project Area, NMFS is imposing a seasonal restriction on detonations from December 1–April 30. For each species, Revolution Wind selected the highest average monthly marine mammal density among the months of May through November (Roberts *et al.* (2023)) to conservatively estimate exposures from UXO/MEC

detonation for a given species (*i.e.*, assumed all 13 UXO/MECs would be detonated in the month with the highest average density). This approach is similar to what was used for determining the most appropriate species densities for monopile foundation installation take estimation. Given that UXOs/MECs detonations have the potential to occur anywhere within the Lease Area and RWEA, a 15-km (9.32 mi) perimeter was applied around the Lease Area when selecting density data to include in take estimation (reduced from the 50 km (31 mi) perimeter in the ITA application) and a 10 km (6.2 mi) perimeter was applied to the RWEA (see Figures 12 and 13 of the Updated Density and Take Estimation Memo). In some cases where monthly densities were unavailable, annual densities were used instead for certain species (*i.e.*, blue whales, pilot whale *spp.*).

Table 15 provides those densities and the associated months in which the species-specific densities are highest for the RWEA and Lease Area, respectively.

In addition to assuming all detonations would be of the largest charge weight, Revolution Wind assumed six detonations would occur in the RWEA and seven would occur in the Lease Area. To estimate take incidental to UXO/MEC detonations in the RWEA, the maximum ensonified areas based on the largest $R_{95\%}$ to Level A harassment (PTS) and Level B harassment (TTS) thresholds (assuming 10-dB attenuation) from a single detonation in the RWEA, shown in Tables 45 and 47 in Revolution Wind's ITA application, were multiplied by six (the estimated number of UXOs/MECs that may be encountered in the RWEA) and then multiplied by the marine mammal densities shown in Table 15, resulting in the take estimates in Table 16. For the Lease Area, the same method was applied, using the maximum ensonified areas in Tables 46 and 48 in the ITA application multiplied by seven (the estimated number of UXOs/MECs that may be encountered in the Lease Area) and then multiplied by the marine mammal densities shown in Table 15, resulting in the values shown in the

columns for the Lease Area (with the heading "LA") of Table 16. Again, Revolution Wind based the amount of requested take on the number of exposures estimated assuming 10-dB attenuation using a noise abatement system because they believe consistent, successful implementation of this mitigation measure will be possible.

Revolution Wind's mitigation and monitoring measures are intended to avoid Level A take of most species and the extent and severity of Level B harassment (see Mitigation and Monitoring and Reporting sections below). However, given the relatively large distances to the high-frequency cetacean Level A harassment (PTS, SEL_{cum}) isopleth applicable to harbor porpoises, and the difficulty detecting this species at sea, Revolution Wind requested and NMFS authorizes take by Level A harassment of 49 harbor porpoises. Similarly, seals are difficult to detect at longer ranges and, although the distance to the phocid hearing group SEL PTS threshold is not as large as that for high-frequency cetaceans, it may not be possible to detect all seals within the threshold distances even with the required monitoring measures. Therefore, in addition to the requested Level B harassment in Table 16, Revolution Wind requested Level A harassment of three gray seals and five harbor seals. For the proposed rule, NMFS adjusted the amount of take proposed for authorization to 7 gray seals and 16 harbor seals to correct for Revolution Wind's arithmetic error in the application when summing the density-based Level A exposures for the Lease Area and RWEA for each species. As described in the Comments and Responses section in the final rule, NMFS is also authorizing the amount of model-estimated Level A harassment (PTS) take (increased to group size where applicable) incidental to UXO/MEC detonations: 2 fin whales, 2 humpback whales, 8 minke whales, 35 common dolphins, 8 bottlenose dolphins (Western North Atlantic offshore stock), and 28 Atlantic white-sided dolphins. In making the decision to authorize the take indicated above,

NMFS considered the Commission's recommendation, the challenge of monitoring the large mitigation and monitoring zone size (particularly for heavier charge weight UXOs/MECs) required for this activity, difficulty visually detecting smaller, cryptic marine mammals (*e.g.*, minke whales, dolphin *spp.*) at the furthest extent of the clearance zones, and that the authorized take numbers do not fully account for the effectiveness of the required mitigation measures other than the 10-dB noise attenuation incorporated in acoustic and exposure modeling.

As described for WTG and OSS installation, the Commission suggested that, given the frequency of common dolphin occurrence in the Project Area, NMFS should authorize an increased (relative to the amount included in the proposed rule) number of common dolphin takes, by Level B harassment, for all activities. Before we addressed the Commission's suggestion, we corrected the following transcription errors included in the proposed rule: the proposed take, by Level B harassment, should have been 14, not 9, bottlenose dolphins and 387, not 211, common dolphins. NMFS concurs with the Commission's suggestion and has included 245 Level B harassment takes of common dolphins incidental to UXO/MEC detonations (in addition to the corrected number ($n=387$) of estimated Level B harassment takes). Because Revolution Wind did not specify the time of year for this activity, it's equally possible that detonations could occur when common dolphin densities are highest or lowest in the Project Area. To account for this in determining the appropriate number of additional common dolphin takes to authorize, NMFS assumed that one group (group size = 34.9, rounded to 35) could be taken by Level B harassment incidental to every other detonation ($n=7$), equaling 245 common dolphin takes. Table 16 incorporates a total number of 632 Level B harassment takes (387 plus 245) of common dolphins incidental to UXO/MEC detonations.

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Table 16 -- Estimated and Authorized Level A Harassment and Level B Harassment Takes Resulting from the Detonation of Up to 13 UXOs, Assuming 10-dB of Sound Attenuation, Over 5 Years

Species	Modeled Level A Harassment			Modeled Level B Harassment			PSO Data Take Estimate	Mean Group Size	Authorized Annual Level A Take	Authorized Annual Level B Take
	LA ¹	RWEC ²	Total (LA +RWEC)	LA	RWEC	Total (LA and RWEC)				
North Atlantic Right Whale*	0.6	0.2	0.8	6.0	5.2	11.2	0.5	2.4	0	12
Blue Whale*	0.0	0.0	0.0	0.0	0.0	0.1	-	1.0	0	1
Fin Whale*	0.8	0.4	1.2	8.9	7.8	16.7	3.2	1.8	2 ³	17
Humpback Whale	0.6	0.4	0.9	6.1	5.3	11.4	9.6	2.0	2 ³	12
Minke Whale	4.8	3.0	7.7	51.1	44.6	95.7	2.0	1.2	8 ³	96
Sei Whale*	0.4	0.2	0.5	3.8	3.3	7.1	0.1	1.6	2 ³	8
Sperm Whale*	0.0	0.0	0.0	0.1	0.0	0.1	-	1.5	0	2
Atlantic Spotted Dolphin	0.0	0.0	0.0	0.1	0.1	0.2	-	29.0	0	29
Atlantic White-Sided Dolphin	0.1	0.0	0.1	2.4	2.1	4.5	0.7	27.9	28 ³	28
Bottlenose Dolphin	0.0	0.6	0.1	1.3	1.1	2.4	13.7	7.8	8 ³	14
Common Dolphin	0.3	0.2	0.4	10.3	9.3	19.6	386.9	34.9	35 ³	632 ⁴
Long-finned Pilot Whales ⁵	0.0	0.0	0.0	0.1	0.1	0.2	-	8.4	0	9
Risso's Dolphin	0.0	0.0	0.0	0.1	0.1	0.2	1.0	5.4	0	6
Harbor Porpoise	33.1	15.8	48.9	161.9	147.0	308.9	0.3	2.7	49	309
Gray Seal	7.9	8.7	16.6	176.7	150.2	326.8	0.9	0.4	17	327
Harbor Seal	3.0	3.3	6.3	66.7	56.7	123.5	1.1	1.0	7	124

* Denotes species listed under the Endangered Species Act

1 - LA = Lease Area

2 - RWEC = Revolution Wind Export Cable route

3 - NMFS is authorizing Level A harassment of the modeled number of Level A harassment (PTS) takes, rounded up to the nearest whole number and/or group size, as appropriate, in addition to the Level A harassment (PTS) take of harbor porpoises, gray seals, and harbor seals proposed for authorization (87 FR 79072, December 23, 2022).

4 - NMFS is authorizing 632 Level B harassment takes of common dolphins incidental to UXO/MEC detonations, which includes the corrected number of Level B harassment takes Revolution Wind requested (n=387) and an additional 245 takes as a result of a comment from the Commission questioning if the amount of proposed take was sufficient.

5 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.**BILLING CODE 3510-22-C**

While there would be no more than 13 detonations of UXOs/MECs, each of which would be of very short duration (approximately 1 second), UXO/MEC detonations have a higher potential to cause mortality and injury than other Project activities and therefore have specific mitigation measures designed to prevent mortality and/or injury of marine mammals, including: (1) time of year/seasonal restrictions; (2) time of day restrictions; (3) use of PSOs to visually observe for North Atlantic right

whales; (4) use of PAM to acoustically detect North Atlantic right whales; (5) implementation of clearance zones; (6) use of noise mitigation technology; and, (7) post-detonation monitoring visual and acoustic monitoring by PSOs and PAM operators.

The mitigation measures Revolution Wind must implement during any UXO/MEC detonations are expected to reduce the likelihood of Level A harassment (PTS) and, to a degree, Level B harassment to the extent practicable.

However, as described above, there remains potential for Level A harassment (PTS) for multiple species.

Temporary Cofferdam or Casing Pipe/Goat Post Installation and Removal

Acoustic modeling, using JASCO's MONM-BELLHOP model (used for modeling impact pile driving), was performed for Ørsted's Sunrise Wind Farm project to determine distances to the Level A harassment and Level B harassment isopleths resulting from

installation and removal of steel sheet piles to construct cofferdams and goal posts, and installation and removal of casing pipes using pneumatic hammering (Küsel *et al.*, 2022b). Revolution Wind will install the same type of sheet piles and casing pipes in a similar location using the exact same methods as Sunrise Wind used to inform a published analysis, therefore, the modeling results described for Sunrise Wind (Küsel *et al.*, 2022b) and presented here are considered applicable to Revolution Wind's project. For take assessment purposes, the sheet pile cofferdam scenario results in a larger amount (compared to pneumatic hammering for casing pipe installation and vibratory pile driving for goal posts) of take by Level B harassment and was, therefore, the scenario carried further in the Estimated Take section. This is because acoustic propagation modeling predicts that the distance to the Level B harassment threshold isopleth produced by vibratory pile driving is approximately 10 km, while the distance to the same isopleth produced by pneumatic hammering is approximately 0.92 km. The sheet pile cofferdam scenario will require up to 56 days of vibratory hammer use for installation and removal, while the casing pipe scenario (including goal posts) will require 8 days of pneumatic hammering (2 days to install and 2 days to remove each casing pipe) and up to 12 days of vibratory pile driving. Removal of the casing pipes also involves the use of a pneumatic pipe ramming tool, but the pipe would be pulled out of the seabed while hammering was occurring instead of pushed into it. The larger number of total days of pile driving for the sheet pile cofferdam scenario coupled with the fact that vibratory pile driving on all of those days will produce the larger Level B harassment zone means the anticipated take, by Level B harassment, from the sheet pile cofferdam scenario will necessarily be higher and is, therefore, carried forward as the more conservative Level B harassment assumption. The acoustic ranges to the Level A harassment (SEL_{cum}) thresholds from pneumatic hammering of the casing pipe are estimated to be the following for each hearing group: low frequency = 3.87 km, mid frequency = 0.23 km, high frequency = 3.95 km, and phocid pinnipeds = 1.29 km. Level A harassment (SPL_{pk}) thresholds are not expected to be generated by pneumatic hammering. The estimated distances to Level A harassment SEL_{cum} thresholds are larger than the distance to the Level B harassment threshold (920 m). This is

due to the high strike rate of the pneumatic hammer resulting in a high number of accumulated strikes per day. Most cetacean species are not expected to occur frequently close to this nearshore site, and individuals of any species (including seals) are not expected to remain within the estimated SEL_{cum} threshold distances for the entire 3-hour duration of hammering in a day. However, based on the Commission's recommendation (see Comments and Responses section) and given the (1) relatively frequent occurrence of harbor porpoises in Narragansett Bay, particularly at the time of year when Revolution Wind will conduct landfall construction (Kenney and Vigness-Raposa 2010), (2) the large distance to the Level A harassment SEL_{cum} threshold isopleth for harbor porpoises (3.95 km), and (3) the difficulty visually detecting harbor porpoises (particularly with increasing distance from the source), it's possible that this species may be exposed to noise levels that rise to the level of Level A harassment (PTS). In addition, since publication of the proposed rule, Revolution Wind determined that it will be impracticable to monitor a 4-km shutdown zone, as described in the proposed rule (87 FR 79072, December 23, 2022). Based on NOAA shipboard observations of harbor porpoises used in habitat-based density modeling conducted by Roberts *et al.* (2016, 2023), the detection probability for harbor porpoises drops off substantially in the 750–1000 m range when sea states are a Beaufort Sea State of 2 or less. Therefore, Revolution concluded that 750 m is the maximum practicable extent within which they could effectively monitor for harbor porpoise during casing pipe installation and removal. NMFS has adjusted the shutdown zone in this final rule to 750 m. Based on these factors and a recommendation from the Commission (see Comments and Responses section), NMFS is authorizing take of harbor porpoises, by Level A harassment (PTS), incidental to pneumatic hammering of casing pipe installation should this activity occur. Given (1) that work will occur within Narragansett Bay, a habitat that few marine mammal species typically use, (2) the short duration of pneumatic hammering, and (3) the implementation of mitigation and monitoring measures, Level A harassment of all other marine mammal species incidental to pneumatic hammering of casing pipe installation is not expected or authorized. In addition, given the nature of vibratory pile driving and the small distances to Level A harassment thresholds (5–190 m),

sheet pile cofferdam installation is also not expected to result in Level A harassment. Revolution Wind did not request and NMFS is not authorizing any Level A harassment incidental to installation of sheet pile cofferdams via vibratory pile driving.

In summary, the Level B harassment zone produced by vibratory pile driving of sheet piles (9.74 km) is significantly larger than that produced by pneumatic hammering of a casing pipe (0.92 km). Additionally, as mentioned previously, the sheet pile cofferdam scenario will require up to a total of 56 days of vibratory pile driving for installation and removal, while the casing pipe scenario will require up to 24 days of vibratory pile driving plus 8 days of pneumatic hammering. The larger spatial impact for Level B harassment combined with the longer duration of sheet pile cofferdam installation will produce a larger amount of Level B harassment; therefore, this landfall construction activity was carried forward as the most conservative scenario to estimate the amount of Level B harassment.

JASCO used its MONM-BELLHOP to predict acoustic propagation for frequencies between 5 Hz and 25 kHz produced by vibratory pile driven installation of the steel sheet piles that will be used to construct temporary cofferdams (Küsel *et al.*, 2022b). Acoustic propagation modeling was based on a winter sound speed profile, which was deemed both conservative and appropriate for the Project because of the timing of landfall construction (Q4 2023–Q1 2024). Additional modeling assumptions are included in Table 17.

Decade band SEL levels were obtained from vibratory pile driving measurements available in the literature (Illingworth and Rodkin, 2017). The Illingworth and Rodkin (2017) measurements are for vibratory driving of four 12-in wide connected sheet piles (48 inch/122 centimeter total width) using an APE Model 300 vibratory hammer (1842.0 kilonewton (kN) centrifugal force). Illingworth and Rodkin (2017) included SEL at 10 m from the pile in the frequency band 5–25,000 Hz. The average (from 10 piling measurements) maximum broadband SEL was 182.7 dB re 1 $\mu Pa^2 \cdot s$. For modeling of vibratory driving of sheet piles at the landfall construction horizontal directional drilling (HDD) location, SEL band levels were corrected for spherical spreading (+20 dB, corresponding to 10 m range) (Küsel *et al.*, 2021).

Additional details on the acoustic modeling conducted for the Sunrise

Wind project can be found in the Sunrise Wind Farm Project Underwater Noise and Exposure Modeling report

available on NMFS' website: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-sunrise->

wind-llc-construction-and-operation-sunrise-wind.

Table 17 -- Sheet Pile Installation Key Piling Assumptions Used in the Source Modeling

Parameter	Model Input
Vibratory Hammer	APE 300
Pile Type	Sheet Pile
Pile Length	30 m
Pile Width	0.6 m
Pile Wall Thickness	2.54 cm
Seabed Penetration	10 m
Time to Install 1 Pile	2 hours
Number of Piles per Day	4

Similar to the modeling approach for impact pile driving, distances to harassment thresholds are reported as $R_{95\%}$ values (Table 18). Distances to the

Level A harassment threshold (SEL_{cum}) are relatively small, ranging from 5 m for low-frequency cetaceans to 190 m for high-frequency cetaceans. The distance

to the Level B harassment threshold is 9,740 m for all species.

Table 18 -- Acoustic Ranges ($R_{95\%}$), in Meters, to Level A Harassment (PTS) and Level B Harassment Thresholds from Vibratory Pile Driving, Assuming a Winter Sound Speed Profile

Marine Mammal Hearing Group	Level A Harassment SEL_{cum} Thresholds (dB re 1 $\mu Pa^2 \cdot s$)	Level B Harassment SPL_{rms} Threshold (120 dB re 1 μPa)
Low-frequency	5	9,740
Mid-frequency	-	9,740
High-frequency	190	9,740
Phocid pinniped	10	9,740

Accounting for the effects that nearby land would have on sound propagation using geospatial information systems (GIS) (Environmental Systems Research Institute, Inc. (ESRI), 2017) results in a reduction in the estimated area of 54.1 km² (20.9 mi²) potentially being ensonified above the 120 dB threshold. As a cautionary approach, this 54.1 km² (20.9 mi²) includes some areas beyond 9.74 km (6.05 mi) from the landfall location and reflects the maximum area potentially ensonified above threshold levels from construction activities at

that site, including if a larger vibratory pile driving hammer were to be used.

Regarding how density and occurrence information was applied in estimating take for cofferdam installation, the export cable landfall construction work will take place near Quonset Point in North Kingstown, Rhode Island, which is within Narragansett Bay. However, the habitat-based marine mammal densities from Roberts *et al.* (2023) do not include waters within Narragansett Bay. As an alternative, densities calculated from the area just outside of Narragansett Bay

were used in exposure estimation. This is a conservative approach since there have been few reported sightings of marine mammals, other than seals, within Narragansett Bay (Raposa, 2009).

To select marine mammal density grid cells from the Roberts *et al.* (2023) data representative of the area just outside of Narragansett Bay, a zone representing the ensonified area plus a 5-km buffer from the mouth of Narragansett Bay was created in GIS (ESRI, 2017). This buffer was then intersected with the density grid cells for each individual species to select those near the mouth of

Narragansett Bay (Figure 8 in Revolution Wind's Updated Density and Take Estimation Memo). Since the timing of landfall construction could

vary somewhat from the planned schedule, the maximum average monthly density from January through December for each species was selected

(Table 19) and used to estimate exposures from landfall construction.
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Table 19 -- Maximum Monthly Marine Mammal Densities In and Near the Mouth of Narragansett Bay and the Month in Which Each Maximum Density Occurs

Species	Maximum Monthly Density (Ind/km ²)	Maximum Density Month
North Atlantic Right Whale*	0.0002	March
Blue Whale*	0.0000	Annual
Fin Whale*	0.0000	-
Humpback Whale	0.0004	December
Minke Whale	0.0005	May
Sei Whale*	0.0002	April
Sperm Whale*	0.0000	-
Atlantic Spotted Dolphin	0.0000	-
Atlantic White-Sided Dolphin	0.0004	November
Bottlenose Dolphin	0.0002	September
Common Dolphin	0.0065	November
Pilot Whales ¹	0.0000	-
Risso's Dolphin	0.0000	-
Harbor Porpoise	0.0125	December
Gray seal	0.128	October
Harbor seal	0.204	October

* Denotes species listed under the Endangered Species Act.

1 – Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

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Cable Landfall Construction Take Estimation

Given the short duration of the activity and shallow, coastal location, animat exposure modeling was not conducted for cofferdam or casing pipe and goal post installation and removal to determine potential exposures from vibratory pile driving. Rather, the modeled acoustic ranges to Level A harassment (PTS) and Level B harassment isopleths were used to

calculate the area around the cofferdam predicted to be ensonified daily to levels that exceed the thresholds, or the Ensonified Area. The Ensonified Area was calculated as the following:

$$\text{Ensonified Area} = \pi * r^2,$$

where r is the linear acoustic range from the source to the Level A harassment and Level B harassment isopleths. Because the distance to the Level B harassment threshold for cofferdam installation and removal (9,740 m) is larger than the distance for

pneumatic hammering of casing pipes (920 m), the amount of Level B harassment take authorized assuming cofferdam will be installed encompasses any take that may occur incidental to installing goal posts or casing pipes.

To calculate density-based exposures estimates incidental to installation of two cofferdams, the average marine mammal densities from Table 19 were multiplied by the daily ensonified area (54.1 km²) for installation of sheet piles. Given that use of the vibratory hammer during cofferdam installation and

removal may occur on up to 56 days, the daily estimated take was multiplied by 56 to produce the results shown in Table 20. However, as noted above, to be conservative, Revolution Wind has requested take by Level B harassment based on the highest exposures predicted among the density-based, PSO-based, or average group size-based estimates; the authorized take is indicated in column 5 of Table 20. Mysticete whales are unlikely to occur in the immediate vicinity of the activity or within Narragansett Bay (Raposa, 2009); therefore, Revolution Wind did not request and NMFS is not authorizing take of these species. In their ITR application, Revolution Wind requested two sperm whale Level B harassment takes incidental to landfall construction, which we included in the proposed rule. In this final rule, NMFS is not authorizing Level B harassment of sperm whales incidental to the specified activity because the sperm whale exposure estimate is 0.1 and the species exhibits a preference for deep oceanic habitat rather than the shallow waters in

Narragansett Bay, thus, the probability of take is de minimis. Finally, we addressed the following transcription errors included in the proposed rule: the proposed take, by Level B harassment, should have been 60, not 36, bottlenose dolphins and 1,667, not 905, common dolphins.

As mentioned in the Comments and Responses section, the Commission recommended that NMFS authorize Level A harassment (PTS) of harbor porpoises incidental to pneumatic hammering of casing pipes, should Revolution choose to conduct that activity. Harbor porpoises are one of the few marine mammals known to occur regularly in Narragansett Bay (*e.g.*, Kenney and Vigness-Raposa, 2010), particularly in the winter during which casing pipe installation would occur (Q4 2023–Q1 2024). The likely temporal and spatial overlap of harbor porpoise occurrence with the Level A harassment (PTS) acoustic footprint resulting from pneumatic hammering, the size of the Level A harassment zone (PTS) (3,950 m), and the species' cryptic nature support authorization of Level A

harassment. Revolution Wind expects that it will require 8 days of pneumatic hammering to install and remove the casing pipes. Because Revolution Wind has not specified exactly which 8 days in Q4 2023–Q1 2024 casing pipe installation would occur, it is possible that they would complete this activity in December or January, when harbor porpoise densities near the landfall construction site are an order of magnitude higher than in the other months in which the species consistently utilizes habitat in/near Narragansett Bay (March-May), and the potential for acoustic impacts from pneumatic hammering is highest. Thus, NMFS conservatively assumed that one group (group size = 2.7; Kraus *et al.*, 2016) rounded to the nearest whole number may be taken by Level A harassment per day of pneumatic hammering (n=8). Therefore, NMFS is authorizing 24 takes, by Level A harassment, of harbor porpoises incidental to casing pipe installation (Table 21).

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Table 20 -- Estimated Level B Harassment Incidental to Cofferdam, Goal Posts, or Casing Pipe Construction

Species	Exposure Estimate	PSO Data Take Estimate	Mean Group Size	Highest Level B Take
Atlantic Spotted Dolphin	0.1	-	29.0	29
Atlantic White-Sided Dolphin	1.2	5.2	27.9	28
Bottlenose Dolphin	0.5	59.2	7.8	60
Common Dolphin	19.6	1,666.6	34.9	1,667
Long-finned Pilot Whales ¹	0.0	-	8.4	9
Risso's Dolphin	0.1	4.1	5.4	6
Harbor Porpoise	37.8	1.5	2.7 ¹	38
Gray Seal	833.1	2.5	1.4	834
Harbor Seal	314.7	3.2	1.4	315

* Denotes species listed under the Endangered Species Act.

1 – Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

Table 21 -- Estimated Level A harassment (PTS) Incidental to Casing Pipe Installation

Species	Level A harassment (PTS) take
Harbor porpoises	24 ¹

1 - NMFS has authorized Level A harassment (PTS) of 24 harbor porpoises. NMFS calculated this number of takes by multiplying group size (2.7, rounded to 3) times the number of days on which pneumatic hammering will occur (n=8).

BILLING CODE 3510-22-C**HRG Surveys**

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described in NMFS (2018) to estimate ranges to the Level A harassment and Level B harassment isopleths. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Revolution Wind utilized the following criteria for selecting the appropriate inputs into the NMFS User Spreadsheet Tool (NMFS, 2018):

(1) For equipment that was measured in Crocker and Fratantonio (2016), the

reported source level (SL) for the most likely operational parameters was selected.

(2) For equipment not measured in Crocker and Fratantonio (2016), the best available manufacturer specifications were selected. Use of manufacturer specifications represent the absolute maximum output of any source and do not adequately represent the operational source. Therefore, they should be considered an overestimate of the sound propagation range for that equipment.

(3) For equipment that was not measured in Crocker and Fratantonio (2016) and did not have sufficient manufacturer information, the closest proxy source measured in Crocker and Fratantonio (2016) was used.

The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems that will be used during HRG surveys. These included variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. The data provided in Crocker and Fratantonio (2016) represent the most applicable

data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available. Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP-D700 and CSP-N). The CSP-D700 power source was used in the 700 joules (J) measurements but not in the 1,000 J measurements. The CSP-N source was measured for both 700 J and 1,000 J operations but resulted in a lower source level; therefore, the single maximum source level value was used for both operational levels of the S-Boom.

Table 22 identifies all the representative survey equipment that operates below 180 kHz (*i.e.*, at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned survey activities and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment.

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Table 22 -- Summary of representative HRG Survey equipment

Equipment Type	Representative Model	Operating Frequency (kHz)	Source Level SPL _{rms} (dB)	Source Level 0-pk (dB)	Pulse Duration (ms)	Repetition Rate (Hz)	Beamwidth (degrees)	Information Source
Sub-bottom Profiler	EdgeTech 216	2 – 16	195	-	20	6	24	MAN
	EdgeTech 424	4 – 24	176	-	3.4	2	71	CF
	Edgetech 512	0.7 – 12	179	-	9	8	80	CF
	GeoPulse 5430A	2 – 17	196	-	50	10	55	MAN
	Teledyn Benthos CHIRP III - TTV 170	2 – 17	197	-	60	15	100	MAN
Sparker	Applied Acoustics Dura-Spark UHD (400 tips, 500 J) ¹	0.3 – 1.2	203	211	1.1	4	Omni	CF
Boomer	Applied Acoustics triple plate S-Boom (700–1,000 J) ²	0.1 – 5	205	211	0.6	4	80	CF

- = not applicable; ET = EdgeTech; J = joule; kHz = kilohertz; dB = decibels; SL = source level; UHD = ultra-high definition; AA = Applied Acoustics; rms = root-mean square; μ Pa = microPascals; re = referenced to; SPL = sound pressure level; PK = zero-to-peak pressure level; Omni = omnidirectional source.

1 - The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems that will be used in the surveys. These include variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

2 - Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

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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 overestimation of 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 mobile sources (such as the active acoustic sources proposed for use during Revolution Wind's HRG surveys), 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. JASCO modeled distances to Level A harassment isopleths for all types of HRG equipment and all marine mammal

functional hearing groups using the NMFS User Spreadsheet and NMFS Technical Guidance (2018).

For HRG surveys, in order to better consider the narrower and directional beams of the sources, NMFS has developed an additional tool for determining the sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. Revolution Wind used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for

energy emitted outside of the primary beam of the source. For sources that operate with different beam widths, the maximum beam width was used (see Table 22). The lowest frequency of the source was used when calculating the absorption coefficient.

Results of modeling using the methodology described above indicated that, of the HRG equipment planned for

use by Revolution Wind that has the potential to result in Level B harassment of marine mammals, sound produced by the Applied Acoustics sparkers and Applied Acoustics triple-plate S-boom will propagate furthest to the Level B harassment isopleth (141 m; Table 23). For the purposes of take estimation, it was conservatively assumed that sparkers and/or boomers will be the

dominant acoustic source for all vessel days (although, again, this may not always be the case). Thus, the distances to the isopleth corresponding to the threshold for Level B harassment for the boomer and sparkers (141 m) was used as the basis of take calculations for all marine mammals.

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Table 23 -- Distances to the Level B Harassment Thresholds for Each HRG Sound Source or Comparable Sound Source Category for Each Marine Mammal Hearing Group

Equipment Type	Representative Model	Distance to Level B harassment threshold (m)
		All (SPL _{rms})
Sub-bottom Profiler	EdgeTech 216	9
	EdgeTech 424	4
	Edgetech 512	6
	GeoPulse 5430A	21
	Teledyn Benthos CHIRP III - TTV 170	48
Sparker	Applied Acoustics Dura-Spark UHD (700 tips, 1,000 J)	34
	Applied Acoustics Dura-Spark UHD (400 tips, 500 J)	141
	Applied Acoustics Dura-Spark UHD (400 tips, 500 J)	141
Boomer	Applied Acoustics triple plate S-Boom (700–1,000 J)	141

To estimate densities for the HRG surveys occurring both within the Lease Area and within the RWECA based on Roberts *et al.* (2023), a 5-km (3.11 mi)

perimeter was applied around each area (see Figures 10 and 11 of the Updated Density and Take Estimation Memo). Given this work could occur year-round,

the annual average density for each species was calculated using average monthly densities from January through December (Table 24).

Table 24 -- Annual Average Marine Mammal Densities (Indiv/km²) Along the RWEC and Lease Area

Species	RWEC	Lease Area
North Atlantic Right Whale*	0.0011	0.0027
Blue Whale*	0.0000	0.0000
Fin Whale*	0.0008	0.0016
Humpback Whale	0.0008	0.0010
Minke Whale	0.0022	0.0044
Sei Whale*	0.0003	0.0004
Sperm Whale*	0.0001	0.0001
Atlantic Spotted Dolphin	0.0000	0.0001
Atlantic White-Sided Dolphin	0.0038	0.0090
Bottlenose Dolphin	0.0021	0.0049
Common Dolphin	0.0202	0.0409
Pilot Whales ¹	0.0001	0.0005
Risso's Dolphin	0.0001	0.0003
Harbor Porpoise	0.0191	0.0316
Seals (Harbor and Gray)	0.1477	0.1182

* Denotes species listed under the Endangered Species Act.

¹ – Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

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The maximum range (*i.e.*, 141 m) to the Level B harassment threshold and the estimated trackline distance traveled per day by a given survey vessel (*i.e.*, 70 km) were used to calculate the daily ensonified area, or zone of influence (ZOI), around the survey vessel.

The ZOI is a representation of the maximum extent of the ensonified area around a HRG sound source over a 24-hr period. The ZOI for each piece of equipment operating at or below 180 kHz was calculated per the following formula:

$$\text{ZOI} = (\text{Distance/day} \times 2r) + \pi \times r^2$$

Where *r* is the linear distance from the source to the harassment isopleth.

The largest daily ZOI (19.8 km²), associated with the use of boomers and sparkers, was applied to all planned vessel days.

Potential Level B harassment density-based exposures were estimated by

multiplying the average annual density of each species within the survey area by the daily ZOI. That product was then multiplied by the number of planned vessel days in each sector during the approximately 1-year construction timeframe (82.1 in RWEC, 165.7 in Lease Area), and the product was rounded to the nearest whole number. These results are shown in columns 2 (Lease Area) and 3 (RWEC) of Table 25. Similar to the approach described above, to be conservative, Revolution Wind has requested take by Level B harassment based on the highest exposures predicted by the density-based, PSO based, or average group size-based estimates, and the authorized take is indicated in column 7 of Table 25 below.

As described in the Comments and Responses section, the Commission suggested that, given the frequency of common dolphin occurrence in the

Project Area, NMFS should authorize an increased (relative to the amount included in the proposed rule) number of common dolphin takes, by Level B harassment for HRG surveys. Common dolphins are regularly sighted by PSOs during HRG surveys but, as described previously, only a portion of those sighted are actually within the Level B harassment zone, as evidenced by PSO monitoring reports for the Project Area (*e.g.*, Smultea Environmental Sciences, LLC, 2020; Valencia *et al.*, 2021; Smultea Environmental Sciences, LLC, 2022). The total number of common dolphins sighted by PSOs is highly variable, depending on the survey timing (which may align more or less with peaks in expected common dolphin occurrence), the number of kilometers surveys, and survey conditions, among other factors. As described above, Revolution Wind anticipates that they may conduct HRG

surveys throughout the effective period of the authorization. Given common dolphins are one of the most frequently sighted species during HRG surveys (as reported by PSOs in the monitoring reports cited here) and the number of dolphins sighted is highly variable and dependent on multiple influencing

factors (e.g., time of year), NMFS concurs with the Commission and is conservatively authorizing 4,457 common dolphin Level B harassment takes incidental to HRG surveys during the year of construction, which is equivalent to the number of common dolphins taken by Level B harassment

during the HRG surveys the Commission refers to in their comment. This is an 89 percent increase from the 2,354 common dolphin Level B harassment takes proposed for authorization.

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Table 25 -- Estimated Take, by Level B Harassment, Incidental to HRG Surveys during the Construction Period (Year 1)

Species	Modeled Exposures Lease Area	Modeled Exposures RWEC	Total Density-based Take Estimate	PSO Data Take Estimate	Mean Group Size	Authorized Level B Take
North Atlantic Right Whale*	7.4	1.8	9.2	-	2.4	10
Blue Whale*	0.0	0.0	0.0	-	1.0	1
Fin Whale*	4.4	1.4	5.8	6.6	1.8	7
Humpback Whale	2.8	1.2	4.0	16.5	2.0	17
Minke Whale	11.8	3.7	15.5	5.9	1.2	16
Sei Whale*	1.1	0.4	1.6	-	1.6	2
Sperm Whale*	0.4	0.1	0.5	-	1.5	2
Atlantic Spotted Dolphin	0.3	0.1	0.3	-	29.0	29
Atlantic White-Sided Dolphin	24.5	6.5	31.0	-	27.9	31
Bottlenose Dolphin	13.2	3.8	17.0	100.1	7.8	101
Common Dolphin	110.5	33.5	144.0	2,353.4	34.9	4,457 ¹
Long-Finned Pilot Whales ²	1.4	0.1	1.5	-	8.4	9
Risso's Dolphin	0.8	0.2	1.0	2.3	5.4	6
Harbor Porpoise	85.4	30.9	116.3	-	2.7	117
Gray Seal	232.0	177.9	410.0	7.1	1.4	410
Harbor Seal	87.7	67.2	154.9	11.2	1.4	155

* Denotes species listed under the Endangered Species Act.

1 - In response to consideration of a comment from the Commission, NMFS is authorizing 4,457 Level B harassment takes of common dolphins incidental to HRG surveys during construction (Years 1), which is an 80 percent increase from the number in the proposed rule (2,354). The percentage increase is based on PSO observations in/near the Lease Area (Smultea Environmental Services, 2020).

2 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

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Authorized takes will be by Level B harassment, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.*, pre-start clearance and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably expected outcome of the survey activity. Revolution Wind did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized by NMFS. As described previously, no serious injury or mortality is anticipated or authorized for this activity.

As mentioned previously, HRG surveys will also routinely be carried out during the period of time following construction of the RWF and RWE C which, for the purposes of exposure modeling, Revolution Wind assumed to be 4 years. Revolution Wind estimates that HRG surveys will cover 2,117 km within the Lease Area and 1,642 km along the RWE C annually. Assuming 70 km are surveyed per day, this amounts to 30.2 days of survey activity in the Lease Area and 23.5 days of survey activity along the RWE C each year, or 214.8 days total for the 4-year timeframe following the construction period (assuming all construction activities occur in a single year). Density-based take was estimated using the same approach outlined above by multiplying the daily ZOI by the annual average densities and separately by the number of vessel days planned for the RWE C and Lease Area; the results are shown in columns 2 and 3, respectively, in Table

26. Using the same approach described above, Revolution Wind estimated a conservative amount of annual take, by Level B harassment, based on the highest exposures predicted by the density-based, PSO-based, or average group size-based estimates. The highest predicted exposure value was multiplied by four to yield the amount of take Revolution Wind requested and NMFS is authorizing, shown in column 8 of Table 26 below. Consistent with the method used above to determine the increased number of common dolphin Level B harassment takes incidental to HRG surveys during construction, NMFS is authorizing 1,094 takes per year (89 percent increase from 579 per year, as presented in the proposed rule) of common dolphins, by Level B harassment, for each of the 4 years following construction (4,376 total over 4 years).

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Table 26 -- Estimated Take, by Level B Harassment, from HRG Surveys During Non-construction Years (Years 2-5) and Total 4-year Take

Species	Lease Area	RWEC	Annual Total Density-based Exposures	Annual PSO Data Take Estimate	Mean Group Size	Highest Annual Level B Take (Years 2-5)	4-Year Level B Take
North Atlantic Right Whale*	1.6	0.5	2.1	-	2.4	3	12
Blue Whale*	0.0	0.0	0.0	-	1.0	1	4
Fin Whale*	1.0	0.4	1.3	1.6	1.8	2	8
Humpback Whale	0.6	0.4	1.0	4.0	2.0	5	20
Minke Whale	2.6	1.0	3.6	1.5	1.2	4	16
Sei Whale*	0.3	0.1	0.4	-	1.6	2	8
Sperm Whale*	0.1	0.0	0.1	-	1.5	2	8
Atlantic Spotted Dolphin	0.1	0.0	0.1	-	29.0	29	116
Atlantic White-Sided Dolphin	5.4	1.8	7.2	-	27.9	28	112
Bottlenose Dolphin	2.9	1.0	3.9	24.6	7.8	25	100
Common Dolphin	24.5	9.4	33.8	578.0	34.9	1,094	4,376 ¹
Long-Finned Pilot Whales ²	0.3	0.0	0.3	-	8.4	9	36
Risso's Dolphin	0.2	0.1	0.2	0.6	5.4	6	24
Harbor Porpoise	18.9	8.9	27.8	-	2.7	28	112
Gray Seal	64.1	29.8	113.9	1.7	1.4	114	456
Harbor Seal	24.2	18.8	43.0	2.7	1.4	44	176

* Denotes species listed under the Endangered Species Act.

1 - In response to consideration of a comment from the Commission, NMFS is authorizing 1,094 Level B harassment takes of common dolphins per year (Years 2-5) incidental to HRG surveys, which an 80 percent increase from the number in the proposed rule (579), amounting to 4,376 total Level B harassment takes of common dolphins in non-construction year. The percentage increase is based on PSO observations in/near the Lease Area (Smultea Environmental Services, 2020).

2 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

BILLING CODE 3510-22-C**Total Authorized Take Across All Activities**

NMFS is authorizing take by Level A and Level B harassment incidental to Project activities combined (*i.e.*, impact pile driving to install WTG and OSS monopile foundations (assuming 10-dB attenuation), vibratory pile driving to install and remove temporary cofferdams and goal posts, pneumatic hammering to install and remove

temporary casing pipes UXO/MEC detonations (assuming 10-dB attenuation), and HRG surveys) as shown in Table 27. The number of takes that would occur in each year, based on Revolution Wind's current schedule, is provided in Table 27. The Year 1 take estimates include 165.7 days of HRG surveys, impact installation of WTG and OSS foundations, cofferdam installation/removal, and mitigated UXO/MEC detonations. Year 2 includes 30.2 days of HRG surveys, and potential

impact installation of WTG and OSS monopile foundations, depending on whether or not delays in the schedule for Year 1 occur. Years 3, 4, and 5 each include 30.2 days of HRG surveys. Although temporary cofferdam installation/removal could occur in Year 2, all of the authorized takes were allocated to Year 1 as this represents the most accurate construction scenario. All impact pile driving activities for the WTGs and OSSs could also occur outside of Year 1; however, all of the

takes were allocated to Year 1 as this represents the most likely scenario.

The mitigation and monitoring measures provided in the Mitigation and Monitoring and Reporting sections are activity-specific and are designed to minimize acoustic exposures to marine mammal species.

The number of takes that NMFS authorized is considered conservative for several reasons, including, but not limited to, the following: authorized take numbers are based on the highest number resulting from among three take estimate methodologies (density-based exposure, PSO data-derived, and group size); authorized take numbers assume all foundation piles (n=81) will be installed and all UXO/MECs detonations would occur in the month with the highest monthly average density for each marine mammal species; authorized Level B harassment take numbers for landfall construction assume 56 days of vibratory pile driving for cofferdam installation, although the

casing pipe and goal post alternative would only require 24 days of vibratory pile driving and a short period of pneumatic hammering which has shorter distances to the Level B harassment isopleth than cofferdam installation, if installed; authorized take numbers assume sparkers and/or boomers, which result in the largest acoustic footprint, would be the dominant source for all HRG surveys days, although this may not be the case; authorized take numbers for Level A harassment (PTS) do not fully account for the likelihood that marine mammals will avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury, nor do the take numbers fully account for the effectiveness of the required mitigation and monitoring measures (exception for foundation installation and UXO/MEC detonations, which incorporate 10-dB of sound attenuation).

NMFS also presents the percentage of each marine mammal stock estimated to be taken based on the total amount of allowable annual take for each species, which is presented in Table 28. Table 27 provides the total authorized take from the entire 5-year effective period of the rulemaking and issued LOA. NMFS recognizes that schedules may shift due to a number of planning and logistical constraints such that take may be redistributed throughout the 5 years. However, the 5-year total amount of take for each species, shown in Table 27, and the maximum amount of take in any 1 year (Table 28) would not be exceeded. Additionally, NMFS has required extensive mitigation and monitoring measures, provided in the Mitigation and Monitoring and Reporting sections, which are activity-specific and are designed to minimize, to the extent practicable, impacts to marine mammal species.

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Table 27 -- Annual and Total 5-Year Estimated Level A Harassment and Level B Harassment Takes for All Activities Conducted During the Revolution Wind Offshore Wind Energy Facility Project (2023-2028)

Species	NMFS Stock Abundance	Year 1 (Maximum)		Year 2		Year 3		Year 4		Year 5		5-Year Total	
		Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B
North Atlantic Right Whale*	338 ¹	0	44	0	3	0	3	0	3	0	3	0	56
Blue Whale*	412 ²	0	3	0	1	0	1	0	1	0	1	0	7
Fin Whale*	6,802	4	40	0	2	0	2	0	2	0	2	4	48
Humpback Whale	1,396	9	77	0	5	0	5	0	5	0	5	9	97
Minke Whale	21,968	21	304	0	4	0	4	0	4	0	4	21	320
Sei Whale*	6,292	5	18	0	2	0	2	0	2	0	2	5	26
Sperm Whale*	4,349	0	7	0	2	0	2	0	2	0	2	0	15
Atlantic Spotted Dolphin	39,921	0	116	0	29	0	29	0	29	0	29	0	232
Atlantic White-sided Dolphin	93,233	28	287	0	28	0	28	0	28	0	28	28	399
Bottlenose Dolphin	62,851	8	244	0	25	0	25	0	25	0	25	8	344
Common Dolphin	172,974	35	8,084	0	1,094	0	1,094	0	1,094	0	1,094	35	12,460
Long-finned Pilot Whales ³	39,215 ⁴	0	36	0	9	0	9	0	9	0	9	0	72
Risso's Dolphin	35,215	0	34	0	6	0	6	0	6	0	6	0	58
Harbor Porpoise	95,543	138	1,125	0	28	0	28	0	28	0	28	138	1,237

Gray Seal	27,300	22	2,303	0	114	0	114	0	114	0	114	22	2,759
Harbor Seal	61,336	14	923	0	44	0	44	0	44	0	44	14	1,099

* Listed as Endangered under the Endangered Species Act (ESA).

1 - In the proposed rule (87 FR 79072, December 23, 2022), a population estimate of 368 was used which represented the best available science at the time of publication. However, since the publication of the proposed rule, a new estimate (n=338) was released in NMFS’ final 2022 SARs and has been incorporated into this final rule. In addition, the total annual average observed North Atlantic right whale mortality was updated in the final SAR from 8.1 to 31.2. Total annual average observed North Atlantic right whale mortality during the period 2016 through 2020 was 8.1 animals and annual average observed fishery mortality was 5.7 animals. Numbers presented in this table (31.2 total mortality and 22 fishery mortality) are 2015 through 2019 estimated annual means, accounting for undetected mortality and serious injury. (Hayes *et al.*, 2023).

2 - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our small numbers determination, as shown in parenthesis.

3 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

4 - Long-finned pilot whale abundance estimate (Hayes *et al.*, 2023).

In making the negligible impact determination and the necessary small numbers finding, NMFS assesses the greatest number of authorized take of marine mammals that could occur

within any 1 year, which in the case of this rule is based on the predicted Year 1 for all species. In this calculation, the maximum estimated number of Level A harassment (PTS) takes in any one year

is summed with the maximum estimated number of Level B harassment takes in any one year for each species to yield the highest amount of estimated take that could occur in any year. We

recognize that certain activities could shift within the 5-year effective period of the rule; however, the rule allows for that flexibility and the takes are not expected to exceed those shown in Table 28 in any year.

Table 28 -- Maximum Number of Authorized Takes (Level A Harassment and Level B Harassment) that Could Occur in Any 1 Year of the Project and the Total Percent Stock that Would be Taken Based on the Maximum Annual Authorized Take

Species	NMFS Stock Abundance	Max Level A Harassment	Max Level B harassment	Max Annual Take (Max Level A Harassment + Max Level B Harassment)	Total Percent Stock Taken Based on Maximum Annual Take ¹
North Atlantic Right ² Whale*	338	0	44	44	13.0
Blue Whale*	402 ³	0	3	3	0.73
Fin Whale*	6,802	4	40	44	0.65
Humpback Whale	1,396	9	77	86	6.16
Minke Whale	21,968	21	304	325	1.48
Sei Whale*	6,292	5	18	23	0.37
Sperm Whale*	4,349	0	7	7	0.16
Atlantic Spotted Dolphin	39,921	0	116	116	0.29
Atlantic White-Sided Dolphin	93,233	28	287	315	0.34
Bottlenose Dolphin	62,851	8	244	252	0.40
Common Dolphin	172,974	35	8,084	8,119	4.70
Long-finned Pilot Whales ⁴	39,215 ⁵	0	36	36	0.09
Risso's Dolphin	35,215	0	34	34	0.10
Harbor Porpoise	95,543	138	1,125	1,263	1.32
Gray Seal	27,300	22	2,303	2,325	8.52
Harbor Seal	61,336	14	923	937	1.53

* Listed as Endangered under the Endangered Species Act (ESA).

1 - Calculations of percentage of stock taken are based on the maximum requested Level A harassment take in any one year plus the total requested Level B harassment take in any one year and then compared against the best available abundance estimate as shown in Table 2. For this action, the best available abundance estimates are derived from the NMFS Stock Assessment Reports (Hayes *et al.*, 2023).

2 - In the proposed rule (87 FR 79072, December 23, 2022), a population estimate of 368 was used which represented the best available science at the time of publication. However, since the publication of the proposed rule, a new estimate (n=338) was released in NMFS' draft and final 2022 SARs and has been incorporated into this final rule. In addition, the total annual average observed North Atlantic right whale mortality was updated in the final SARs from 8.1 to 31.2. Total annual average observed North Atlantic right whale mortality during the period 2016 through 2020 was 8.1 animals and annual average observed fishery mortality was 5.7 animals. Numbers presented in this table (31.2 total mortality and 22 fishery mortality) are 2015 through 2019 estimated annual means, accounting for undetected mortality and serious injury. (Hayes *et al.*, 2023).

3 - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our small numbers determination, as shown in parenthesis.

4 - Roberts *et al.* (2023) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species. However, short-finned pilot whales are not expected to occur in the Project Area, thus NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

5 - Long-finned pilot whale abundance estimate (Hayes *et al.*, 2023).

Mitigation

As noted in the Changes from the Proposed to Final Rule section, NMFS has added several new mitigation requirements and clarified a few others, and these changes are described in detail in the sections below. Other than the changes described, the required measures remain the same as those described in the proposed rule. However, NMFS has also re-organized and simplified the section to avoid full duplication of the specific requirements that are fully described in the regulatory text.

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS' regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the

effectiveness of the military readiness activity.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities (e.g., soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the proposed construction activities would occur offshore. Modeling was performed to estimate harassment zones, which were used to inform mitigation measures for the project's activities to minimize Level A harassment and Level B harassment to the extent practicable, while providing estimates of the areas within which Level B harassment might occur.

Generally speaking, the mitigation measures considered and required here fall into three categories: temporal (seasonal and daily) work restrictions, real-time measures (shutdown, clearance, and vessel strike avoidance), and noise attenuation/reduction measures. Seasonal work restrictions are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible or make impacts more likely, in order to reduce both the number and severity of potential takes, and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as implementation of shutdown and clearance zones, as well as vessel strike avoidance measures, are intended to reduce the probability or severity of harassment by taking steps in real time once a higher-risk scenario is identified (e.g., once animals are detected within an impact zone). Noise attenuation measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that may result in longer term chronic impacts.

Below, we briefly describe the required training, coordination, and vessel strike avoidance measures that apply to all specified activities, and then in the following subsections we describe the measures that apply specifically to foundation installation, landfall construction, HRG surveys, and UXO/MEC detonation. Details on specific requirements can be found in Part 217—Regulations Governing The Taking and Importing of Marine Mammals at the end of this rulemaking.

Training and Coordination

NMFS requires all Revolution Wind employees and contractors conducting

activities on the water, including, but not limited to, all vessel captains and crew are trained in marine mammal detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support Revolution Wind's compliance with the LOA, if issued. Additionally, all relevant personnel and the marine mammal species monitoring team(s) are required to participate in joint, onboard briefings prior to the beginning of project activities. The briefing must be repeated whenever new relevant personnel (e.g., new PSOs, construction contractors, relevant crew) join the project before work commences. During this training, Revolution Wind is required to instruct all project personnel regarding the authority of the marine mammal monitoring team(s). For example, training must include that the HRG acoustic equipment operator is required to immediately comply with any call for a delay or shut down by the Lead PSO, and that any disagreement between the Lead PSO and the project personnel must only be discussed after delay or shutdown has occurred. In particular, all captains and vessel crew must be trained in marine mammal detection and vessel strike avoidance measures to ensure marine mammals are not struck by any project or project-related vessel.

Prior to the start of in-water construction activities, vessel operators and crews would receive training about marine mammals and other protected species known or with the potential to occur in the Project Area, making observations in all weather conditions, and vessel strike avoidance measures. In addition, training would include information and resources available regarding applicable Federal laws and regulations for protected species. Revolution Wind will provide documentation of training to NMFS.

North Atlantic Right Whale Awareness Monitoring

Revolution Wind must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of U.S. Coast Guard very high frequency (VHF) Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (e.g., establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic

right whale presence in the area through ongoing visual and passive acoustic monitoring efforts and opportunities (outside of Revolution Wind's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales.

Vessel Strike Avoidance Measures

This final rule contains numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. While the likelihood of a vessel strike is generally low, they are one of the most common ways that marine mammals are seriously injured or killed by human activities. Therefore, enhanced mitigation and monitoring measures are required to avoid vessel strikes to the extent practicable. While many of these measures are proactive intending to avoid the heavy use of vessels during times when marine mammals of particular concern may be in the area, several are reactive and occur when a project personnel sights a marine mammal. The mitigation requirements are described generally here and in detail in the regulation text at the end of this final rule (see 50 CFR 217.274(b)). Revolution Wind will be required to comply with these measures unless an emergency situation presents a threat to the health, safety, or life of a person or when a vessel, actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response, requires speeds in excess of 10 kn (11.5 mph) to fulfill those responsibilities, while in the specified geographical region.

While underway, Revolution Wind is required to monitor for and maintain a minimum separation distance from marine mammals, and operate vessels in a manner that reduces the potential for vessel strike. Regardless of the vessel's size, all vessel operators, crews, and dedicated visual observers (*i.e.*, PSO or trained crew member) must maintain a vigilant watch for all marine mammals during all vessel operations and slow down, stop their vessel, or alter course (as appropriate) to avoid striking any marine mammal. The dedicated visual observer on each vessel, equipped with and trained to use suitable monitoring technology (*e.g.*, binoculars, night vision devices), must be located at an appropriate vantage point for ensuring vessels are maintaining required vessel separation distances from marine mammals (*e.g.*, 500 m from North Atlantic right whales).

All project vessels, regardless of size, must maintain the following minimum

separation zones: 500 m from North Atlantic right whales; 100 m from sperm whales and non-North Atlantic right whale baleen whales; and 50 m from all delphinid cetaceans and pinnipeds (an exception is made for those species that approach the vessel (*i.e.*, bow-riding dolphins)). If any of these species are sighted within their respective minimum separation zone, the underway vessel must shift its engine to neutral and the engines must not be engaged until the animal(s) have been observed to be outside of the vessel's path and beyond the respective minimum separation zone. All project vessels, regardless of size, must immediately reduce speed to 10 kn (11.5 mph) or less for at least 24 hours when a North Atlantic right whale is sighted at any distance by any project-related personnel or acoustically detected by any project-related PAM system. Each subsequent observation or acoustic detection in the Project Area will trigger an additional 24-hour period. If a North Atlantic right whale is reported via any of the monitoring systems within 10 km (6.2 miles (mi)) of a transiting vessel(s), that vessel must operate at 10 kn (11.5 mph) or less for 24 hours following the reported detection. Additionally, in the event that any project-related vessel, regardless of size, observes any unidentified large whale within 500 m of an underway vessel, the vessel is required to immediately reduce speeds to 10 kn (11.5 mph) or less until the minimum separation distance is established.

All Project-related vessels are required to comply with existing NMFS vessel speed restrictions for North Atlantic right whales and the measures within this rulemaking for operating vessels around North Atlantic right whales and other marine mammals. When no other speed restrictions are in place, all Project-related vessels (including crew transfer vessels) are restricted from traveling over 10 kn (11.5 mph), unless traveling in a frequently traveled transit corridor (*e.g.*, crew transfer corridor) from port to the Lease Area while Revolution Wind conducts real-time PAM to detect large whales, in addition to visual monitoring. All Revolution Wind's vessels, regardless of size, must immediately reduce speed to 10 kn (11.5 mph) or less for at least 24 hours when a North Atlantic right whale is sighted at any distance by any project-related personnel or acoustically detected by any project-related PAM system (*e.g.*, in transit corridor). Each subsequent observation or acoustic detection in the Project area must trigger an additional

24-hour period. If a North Atlantic right whale is reported via any of the monitoring systems within 10 kilometers (km; 6.2 miles (mi)) of a transiting vessel(s), that vessel must operate at 10 kn (11.5 mph) or less for 24 hours following the reported detection. If a large whale (other than a North Atlantic right whale) is detected via the transit corridor PAM system, all vessels must travel at 10 kn (11.5 mph) until the whale can be confirmed visually beyond 500 m of the vessel or 24 hours has passed.

To maintain awareness of North Atlantic right whale presence, vessel operators, crew members, and the marine mammal monitoring team would monitor U.S. Coast Guard VHF Channel 16, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any North Atlantic right whale or large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains. All vessels would be equipped with an AIS and Revolution Wind must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources prior to initiating in-water activities. Revolution Wind is required to submit a NMFS-approved North Atlantic Right Whale Vessel Strike Avoidance Plan at least 90 days prior to commencement of vessel use.

Revolution Wind's compliance with these measures will reduce the likelihood of vessel strike to the extent practicable. These measures increase awareness of marine mammals in the vicinity of project vessels and require project vessels to reduce speed when marine mammals are detected (by PSOs, PAM, and/or through another source, *e.g.*, RWSAS) and maintain separation distances when marine mammals are encountered. While visual monitoring is useful, reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of and effects from a vessel strike. Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart, 2007; Conn and Silber, 2013; Van der Hoop *et al.*, 2015; Martin *et al.*, 2015; Crum *et al.*, 2019).

Seasonal and Daily Restrictions

Temporal restrictions in places where marine mammals are concentrated, engaged in biologically important behaviors, and/or present in sensitive life stages are effective measures for reducing the magnitude and severity of human impacts. The temporal restrictions required here are built around North Atlantic right whale protection. Based upon the best scientific information available (Roberts *et al.*, 2023), the highest densities of North Atlantic right whales in the Project Area are expected during the months of January through April, with an increase in density starting in December. However, North Atlantic right whales may be present in the Project Area throughout the year, although the numbers of North Atlantic right whales are not expected to be as large as those in foraging grounds to the east (south of Martha's Vineyard and Nantucket) and north (*e.g.*, Cape Cod Bay, Gulf of St. Lawrence) or calving grounds in the southeast U.S. from Cape Fear, North Carolina, to below Cape Canaveral, Florida.

NMFS is requiring seasonal work restrictions to minimize the North Atlantic right whales risk of exposure to noise incidental to some project activities. These seasonal work restrictions are expected to greatly reduce the number of takes of North Atlantic right whales, and also afford protection to other marine mammals that are known to use the Project Area with greater frequency during winter months, including minke whales.

As described previously, no foundation impact pile driving activities will occur January 1 through April 30. A new measure included in this final rule requires Revolution Wind to avoid impact pile driving to the maximum extent practicable in December; however, pile driving may occur in December if it is unavoidable upon approval from NMFS. Revolution Wind plans to complete landfall construction from Q4 2023 through Q1 2024; however, NMFS is not seasonally restricting this activity given its location (nearshore, inside Narragansett Bay) and relatively short duration of work (particularly for installation and removal of casing pipes), and the minimal expected impacts to marine mammals. Detonations will be considered on a case-by-case basis, thus Revolution Wind did not specify a particular time of year during which they will detonate UXOs/MECs. However, Revolution Wind will be restricted from detonating UXO/MECs December 1 through April 30 to reduce

impacts to North Atlantic right whales during peak occurrence periods. Seasonal restrictions do not apply to HRG surveys; however, Revolution Wind will only survey a predetermined number of survey days each year (Year 1 = 218.7; Years 2–5 = 53.7/year or 214.8 total).

NMFS is also requiring temporal restrictions for some activities. Within any 24-hour period, Revolution Wind is limited to installing up to three monopile foundations. Revolution Wind had requested to initiate pile driving during nighttime when detection of marine mammals is visually challenging. Since the publication of the proposed rule, Revolution Wind has continued discussions with NMFS and BOEM regarding field trials they have been performing to demonstrate the efficacy of their nighttime monitoring methods and systems. These field trials have provided information and evidence that their systems are capable of detecting marine mammals, particularly large whales, at distances necessary to ensure that the required mitigation measures are effective. On April 20, 2023, Revolution Wind submitted an AMP for Nighttime Pile Driving outlining nighttime monitoring protocols and equipment. We reviewed their AMP and, after further discussions and revisions based on our comments back to Revolution Wind, Revolution Wind submitted a final draft AMP on August 4, 2023. NMFS will review the AMP to determine sufficiency. Should NMFS approve the AMP, nighttime pile driving may occur given Revolution Wind adherence to the AMP and additional mitigation and monitoring measures prescribed by NMFS.

Any and all vibratory pile driving associated with cofferdams and goal post installation and removal must only occur during daylight hours. UXO/MEC detonation will be limited to daylight hours only to ensure PSOs can most effectively carry out visual clearance to the farthest extent of the clearance zone prior to detonation, should they need to detonate a UXO/MEC of the largest charge weight. Lastly, given the very small Level B harassment zone associated with HRG survey activities and no anticipated or authorized Level A harassment, NMFS is not requiring any daily restrictions for HRG surveys.

More information on activity-specific seasonal and daily restrictions can be found in the regulatory text at the end of this rulemaking.

Noise Abatement Systems

Revolution Wind is required to employ NAS, also known as noise attenuation systems, during all

foundation installation (*i.e.*, impact pile driving) and UXO/MEC detonation activities to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and minimize, to the extent practicable, any acoustic impacts resulting from these activities. Revolution Wind is required to use at least two NAS to ensure that measured sound levels do not exceed the levels modeled for a 10-dB sound level reduction for foundation installation, which is likely to include a double big bubble curtain combined with another NAS (*e.g.*, hydro-sound damper, or an AdBm Helmholtz resonator), as well as the adjustment of operational protocols to minimize noise levels. For UXO/MEC detonation, a double big bubble curtain must be used and the hoses must be placed at distances to avoid damage to the bubble curtain during detonation. A single bubble curtain, alone or in combination with another NAS device, may not be used for either pile driving or UXO/MEC detonation as received SFV data reveals this approach is unlikely to attenuate sounds to the degree distances to harassment thresholds are less than or equal to those modeled assuming 10-dB of attenuation. Should the research and development phase of newer systems demonstrate effectiveness, as part of adaptive management, Revolution Wind may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation and UXO/MEC detonation activities.

Two categories of NAS exist: primary and secondary. A primary NAS would be used to reduce the level of noise produced by foundation installation activities at the source, typically through adjustments on to the equipment (*e.g.*, hammer strike parameters). Primary NAS are still evolving and will be considered for use during mitigation efforts when the NAS has been demonstrated as effective in commercial projects. However, as primary NAS are not fully effective at eliminating noise, a secondary NAS would be employed. The secondary NAS is a device or group of devices that would reduce noise as it was transmitted through the water away from the pile, typically through a physical barrier that would reflect or absorb sound waves and therefore, reduce the distance the higher energy sound propagates through the water column. Together, these systems must reduce noise levels to those not exceeding modeled ranges to Level A harassment and Level B harassment

isopleths corresponding to those modeled assuming 10-dB sound attenuation, pending results of Sound Field Verification (SFV; see *Sound Field Verification* section below and § 217.274(c)(14)).

Noise abatement systems, such as bubble curtains, are used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin *et al.*, 2016; Koschinski and Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski and Lüdemann, 2013; Nehls *et al.*, 2016). Encapsulated bubble systems (*e.g.*, Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges (*e.g.*, 100–800 Hz), and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices.

The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m steel monopiles in the North Sea. During installation of monopiles (consisting of approximately 8-m in diameter) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.*, 2020) using single BBCs for noise attenuation. If a double big bubble curtain is used

(noting a single bubble curtain is not allowed), Revolution Wind is required to maintain numerous operational performance standards. These standards are defined in the regulatory text at the end of this rulemaking, and include, but are not limited to, construction contractors must train personnel in the proper balancing of airflow to the bubble ring and Revolution Wind must submit a performance test and maintenance report to NMFS within 72 hours following the performance test. Corrections to the attenuation device to meet regulatory requirements must occur prior to use during foundation installation activities and UXO/MEC detonation. In addition, a full maintenance check (*e.g.*, manually clearing holes) must occur prior to each pile being installed or any UXO/MEC detonated. If Revolution Wind uses a noise mitigation device in addition to a double big bubble curtain, similar quality control measures are required.

Revolution Wind is required to submit an SFV plan to NMFS for approval at least 180 days prior to installing foundations or detonating UXO/MECs. They are also required to submit interim and final SFV data results to NMFS and make corrections to the noise attenuation systems in the case that any SFV measurements demonstrate noise levels are above those modeled assuming 10 dB. These frequent and immediate reports allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with anticipated noise levels within our analysis.

Noise abatement systems are not required during landfall construction activities and HRG surveys. Although NAS is not practicable to implement during landfall construction due to the physical nature of linear sheet piles and angled pipe piles, there is a low risk for impacts to marine mammals due to the short work duration and lower noise levels produced during the activities. Regarding HRG surveys, NAS cannot practicably be employed around a moving survey ship, but Revolution Wind is required to make efforts to minimize source levels by using the lowest energy settings on equipment that has the potential to result in harassment of marine mammals (*e.g.*, sparkers, boomers) and turn off equipment when not actively surveying. Overall, minimizing the amount and duration of noise in the ocean from any of the project's activities through use of all means necessary (*e.g.*, noise abatement, turning off power) will effect

the least practicable adverse impact on marine mammals.

Clearance and Shutdown Zones

NMFS requires the establishment of both clearance and, where technically feasible, shutdown zones during project activities that have the potential to result in harassment of marine mammals. The purpose of “clearance” of a particular zone is to minimize potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of an activity if marine mammals are near the activity. The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity.

All relevant clearance and shutdown zones during project activities would be monitored by NMFS-approved PSOs and/or PAM operators (as described in the regulatory text at the end of this rulemaking). At least one PAM operator must review data from at least 24 hours prior to foundation installation or any UXO/MEC detonations and must actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any sighting or acoustic detection within the PAM monitoring zone of a North Atlantic right whale will trigger a delay to commencing pile driving and shutdown.

Prior to the start of certain specified activities (*i.e.*, foundation installation, landfall construction, UXO/MEC detonations, HRG surveys), Revolution Wind must ensure designated areas (*i.e.*, clearance zones, Tables 29–33) are clear of marine mammals prior to commencing activities to minimize the potential for and degree of harassment. For foundation installation and UXO/MEC detonation, PSOs must visually and acoustically monitor clearance zones for marine mammals for a minimum of 60 minutes, where the zone must be confirmed free of marine mammals at least 30 minutes directly prior to commencing these activities. For foundation installation, the minimum visibility zone must extend 2,300 m from the pile May 1 through November 30 and 4,400 m during December (Table 29). These values correspond to the seasonally-specific modeled maximum $ER_{95\%}$ distances to the Level A harassment isopleths among all low-frequency cetaceans (excluding humpback whales), rounded up to the nearest hundred, assuming three monopiles are driven in a day and 10-dB attenuation.

For vibratory pile driving for cofferdam or goal post installation,

pneumatic hammering for casing pipe installation, and HRG surveys, monitoring must be conducted for 30 minutes prior to initiating activities and the clearance zones (Tables 30, 31, and 33) must be free of marine mammals during that time.

For any other in-water construction heavy machinery activities (*e.g.*, trenching, cable laying, *etc.*), if a marine mammal is on a path towards or comes within 10 m (32.8 ft) of equipment, Revolution Wind is required to cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

Once an activity begins, any marine mammal entering their respective shutdown zone would trigger activity cessation. For impact pile driving, the shutdown requirement may be waived if it is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel

that creates risk of injury or loss of life for individuals or the lead engineer determines there is pile refusal or pile instability. In situations when shutdown is called for during impact pile driving but Revolution Wind determines shutdown is not practicable due to aforementioned emergency reasons, reduced hammer energy must be implemented when the lead engineer determines it is practicable. Revolution Wind must document and report to NMFS all cases where the emergency exemption is taken. Because UXO/MEC detonations are instantaneous, no shutdown is possible; therefore, there are clearance zones but no shutdown zones for UXO/MEC detonations (Table 32).

After shutdown, impact pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain pile stability, at which time the lowest hammer

energy must be used to maintain stability. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving must not restart until the North Atlantic right whale has neither been visually or acoustically detected for 30 minutes. Upon re-starting pile driving, soft-start protocols must be followed if pile driving has ceased for 30 minutes or longer.

The clearance and shutdown zone sizes vary by species and are shown in Tables 29 through 33. For foundation installation and UXO/MEC detonation, Revolution Wind is allowed to request modification to these zone sizes pending results of sound field verification (see regulatory text at the end of this rulemaking). Any changes to zone size would be part of adaptive management and would require NMFS' approval.

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Table 29 -- Clearance, Shutdown, Minimum Visibility, and Level B Harassment Zones (in Meters) During Impact Pile Driving in Summer And Winter¹

Monitoring details	North Atlantic right whales		Other large whales		Delphinids		Harbor porpoises		Seals	
Foundation Type	WTG	OSS	WTG	OSS	WTG	OSS	WTG	OSS	WTG	OSS
Clearance Zone	any distance		2,300 (4,400)	1,600 (2,700)	NAS ²	NAS	1,400 (2,400)	900 (1,300)	500 (900)	400 (400)
PAM Clearance Zone	any distance within PAM Monitoring Zone		n/a							
Shutdown Zone	any distance		2,300 (4,400)	1,600 (2,700)	NAS	NAS	1,400 (2,400)	900 (1,300)	500 (900)	400 (400)
PAM Shutdown Zone	any distance within PAM Monitoring Zone		n/a							
PAM Monitoring Zone	10,000 m									
Minimum Visibility Zone	WTG: 2,300 (4,400) OSS: 1,600 (2,700)									
Level B Harassment Zone	WTG: 3,833 (4,271) OSS: 4,100 (4,698)									

1 - Winter (i.e., December) distances are presented in parentheses.

2 - NAS (noise abatement system) means that the zone is small enough that it will be encompassed by the bubble curtain.

Table 30 -- Distances to Harassment Thresholds and Mitigation Zones During Vibratory Pile Driving

Marine Mammal Species	Level A harassment (SEL _{cum}) (m)	Level B harassment (m)	Clearance Zone (m)	Shutdown Zone (m)
Low-frequency cetaceans	5	9,740	100	100
Mid-frequency cetaceans (Sperm whale)	-	9,740	100	100
Mid-frequency cetaceans (non-Sperm whale)	-	9,740	50	50
High-frequency cetaceans	190	9,740	200 ¹	200 ¹
Phocid Pinnipeds (in water)	10	9,740	50	50

¹ - Distance has been increased from 100 m, as initially proposed by Revolution Wind, to ensure the clearance and shutdown zones are larger than the Level A harassment zone (190 m).

Table 31 -- Distances to Harassment Thresholds and Mitigation Zones During Pneumatic Hammering

Marine Mammal Hearing Group	Level A harassment (SEL _{cum}) (m)	Level B harassment (m)	Clearance Zone (m)	Shutdown Zone (m)
Low-frequency	3,870	920	3,900	3,900
Mid-frequency	230	920	250	250
High-frequency	3,950	920	4,000	4,000
Phocid pinnipeds	1,290	920	1,300	1,300

In the proposed rule, we presented zone sizes based solely on the largest charge weight due to uncertainty on how accurately these charge weights could be identified in the water. Since the proposed rule, Revolution Wind has demonstrated that they can reliably identify charge weights in the field charge, which will allow for implementation of weight-specific mitigative zones. Because of this, Revolution Wind is required to implement the ALARP process, as described in the UXO/MEC Charge Weight Memo. This process requires Revolution Wind to undertake “lift-and-shift” (*i.e.*, physical removal) and then lead up to *in situ* disposal, as necessary, which could include low-order (deflagration) to high-order (detonation) methods of removal. Another approach involves the cutting of the UXO/MEC to extract any explosive components. Implementing the ALARP approach

would minimize potential impacts to marine mammals, as UXOs/MECs would only be detonated as a last resort. Revolution Wind will follow a Risk Management Framework designed to align with the ALARP principle, which includes historical research/hazard profiling, communication with all relevant State and Federal Agencies, and the standards within their removal plan (see the UXO/MEC Charge Weight Memo); there is a high level of certainty that charge weights and appropriate removal approaches can be implemented in the field. Furthermore, we are confident that this approach will ensure the least practicable adverse impact on marine mammals by mitigating the potential for TTS for each charge weight. The UXO/MEC Charge Weight Memo is found on NMFS’ website at [https://www.fisheries.noaa.gov/action/incidental-take-authorization-](https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy)

revolution-wind-llc-construction-revolution-wind-energy.

In following this charge weight-specific approach, Revolution Wind is required to clear the relevant zones that apply to detonation of a specific charge weight, as specified in Table 32. These zones are based on (but not equal to) the greatest TTS threshold distances for each charge weight at any modeled site. We note that harbor porpoises and seals are difficult to detect at great distances but, due to the UXO/MEC detonation time of year restrictions, their abundance is likely to be relatively low. These zone sizes may be adjusted based on SFV and confirmation of the UXO/MEC or donor charge sizes after approval by NMFS.

No minimum visibility zone is required for UXO/MEC detonation as the entire visual clearance zone must be clear given the potential for lung and gastrointestinal injury.

Table 32 -- Clearance, Level A Harassment, and Level B Harassment Zones During UXO/MEC Detonations, by Charge Weight and Assuming 10 dB of Sound Attenuation

UXO/MEC Charge Weights		Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid Pinnipeds
E4 (2.3 kg)	Level A harassment (m)	552	50	1,820	182
	Level B harassment (m)	2,82	453	6,160	1,470
	Clearance Zone (m) ^{a, b}	2,500	500	2,500	1,000
E6 (9.1 kg)	Level A harassment (m)	982	75	2,590	357
	Level B harassment (m)	4,680	773	8,000	2,350
	Clearance Zone (m) ^{a, b}	4,000	600	4,000	1,500
E8 (45.5 kg)	Level A harassment (m)	1,730	156	3,900	690
	Level B harassment (m)	7,490	1,240	10,300	3,820
	Clearance Zone (m) ^{a, b}	6,000	1,000	6,000	3,000
E10 (227 kg)	Level A harassment (m)	2,970	337	5,400	1,220
	Level B harassment (m)	10,500	2,120	12,900	5,980
	Clearance Zone (m) ^{a, b}	9,000	1,500	9,000	4,000
E12 (454 kg)	Level A harassment (m)	3,780	461	6,200	1,600
	Level B harassment (m)	11,900	2,550	14,100	7,020
	Clearance Zone (m) ^{a, b}	10,000	2,000	10,000	5,000

a - The clearance zones presented here for the Level B harassment thresholds were derived based on an approximate proportion of the size of the Level B harassment isopleth.

b - Some of the zones have been rounded for PSO clarity.

Revolution Wind must establish clearance and shutdown zones around HRG survey equipment based upon the

radial distance (Table 33) from the acoustic source rather than the vessel itself and monitor Level B harassment

zones specific to equipment type (*i.e.*, boomers, sparkers, and CHIRP sub-bottom profilers). Prior to initiating HRG

survey activities, Revolution Wind must implement a 30-minute pre-start clearance period, during which the

entire clearance zone must be visible. If an HRG source is active and a marine mammal is observed within or entering

a relevant shutdown zone (as described above), an immediate shutdown of the HRG survey equipment is required.

Table 33 -- Level B Harassment Threshold Ranges and Mitigation Zones During HRG Surveys

Marine Mammal Species	Level B Harassment Zone (m)		Clearance Zone (m)	Shutdown Zone (m)
	Boomer/Sparker	CHIRPs		
Low-frequency cetacean (North Atlantic right whale)	141	48	500	500
Other low-frequency cetaceans (non-North Atlantic right whale species)			100	100
Mid-frequency cetaceans	141	48	100	100 ^a
High-frequency cetaceans	141	48	100	100
Phocid Pinnipeds (in water)	141	48	100	100

* Denotes species is listed under the Endangered Species Act.

a - An exception is noted for bow-riding delphinids of the following genera: *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Tursiops*.

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Soft-Start/Ramp-Up

The use of a soft-start or ramp-up procedure is believed to provide additional protection to marine mammals by warning them, or providing them with a chance to leave the area prior to the hammer or HRG equipment operating at full capacity. Soft-start typically involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. Revolution Wind must utilize a soft-start protocol for impact pile driving of monopiles by performing four to six

strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers and installation conditions. The final methodology will be developed by Revolution Wind considering final design details including site-specific soil properties and other considerations. HRG survey operators are required to ramp up sources when the acoustic sources are used unless the equipment operates on a binary on/off switch. The ramp up would involve starting from the smallest setting to the operating

level over a period of approximately 30 minutes. Given the instantaneous nature of UXO/MEC detonations, no ramp-up/soft-start protocol is possible.

Soft-start and ramp-up will be required at the beginning of impact pile driving and use of HRG equipment and at any time following a cessation of activity of 30 minutes or longer. Prior to soft-start or ramp-up beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals.

Fishery Monitoring Surveys

While the likelihood of Revolution Wind's fishery monitoring surveys

impacting marine mammals is minimal, NMFS requires Revolution Wind to adhere to gear and vessel mitigation measures to reduce potential impacts to the extent practicable. In addition, all crew undertaking the fishery monitoring survey activities are required to receive protected species identification training prior to activities occurring and attend the aforementioned onboarding training. The specific requirements that NMFS has set for the fishery monitoring surveys can be found in the regulatory text at the end of this rulemaking.

Based on our evaluation of the mitigation measures, as well as other measures considered by NMFS, NMFS has determined that these measures will provide the means of affecting 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.

Monitoring and Reporting

As noted in the Changes From the Proposed to Final Rule section, we have added, modified, or clarified a number of monitoring and reporting measures since the proposed rule. These changes are described in detail in the sections below and, otherwise, the marine mammal monitoring and reporting requirements have not changed since the proposed rule.

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

- Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:
 - Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
 - Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or

environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and/or
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During the planned activities, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after all impact pile driving, vibratory pile driving, UXO/MEC detonations, and HRG surveys. PAM must be conducted during impact pile driving and UXO/MEC detonation. Revolution must verify that distances to harassment isopleths are not larger than those modeled assuming 10-dB attenuation by performing SFV during impact pile driving and UXO/MEC detonations. Visual observations and acoustic detections would be used to support the activity-specific mitigation measures (e.g., clearance zones). To increase understanding of the impacts of the activity on marine mammals, PSOs must record all incidents of marine mammal occurrence at any distance from the piling locations, during active HRG acoustic sources, and during UXO/MEC detonations. PSOs would document all behaviors and behavioral changes, in concert with distance from an acoustic source. The required monitoring is described below, beginning with PSO measures that are applicable to all the aforementioned activities, followed by activity-specific monitoring requirements.

Protected Species Observer and PAM Operator Requirements

Revolution Wind is required to employ NMFS-approved PSOs and PAM operators. PSOs are trained professionals who are tasked with visually monitoring for marine mammals during pile driving, UXO/MEC detonation, HRG surveys, and pneumatic hammering. The primary purpose of a PSO is to carry out the monitoring, collect data, and, when appropriate, call for the implementation of mitigation measures. In addition to visual observations, NMFS requires that Revolution Wind conduct PAM using trained, experienced PAM operators during impact pile driving, UXO/MEC detonations, and vessel transit.

The inclusion of PAM, which would be conducted by NMFS-approved PAM operators, following a standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind, alongside visual data collection is valuable to provide the most accurate record of species presence as possible and, together, these two monitoring methods are well understood to provide best results when combined together (e.g., Barlow and Taylor, 2005; Clark *et al.*, 2010; Gerrodette *et al.*, 2011; Van Parijs *et al.*, 2021). Acoustic monitoring (in addition to visual monitoring) increases the likelihood of detecting marine mammals within the shutdown and clearance zones of project activities, which when applied in combination of required shutdowns helps to further reduce the risk of marine mammals being exposed to sound levels that could otherwise result in acoustic injury or more intense behavioral harassment.

The exact configuration and number of PAM systems depends on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality, and perhaps, range to the vocalizing marine mammals; although, this approach would add additional costs and greater levels of complexity to the project. Larger baleen cetacean species (*i.e.*, mysticetes), which produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (such as mid-frequency delphinids; odontocetes) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (e.g., whistles and echolocation clicks). As there are no “perfect fit” single-

optimal-array configurations, these setups would need to be considered on a case-by-case basis.

NMFS does not formally administer any PSO or PAM operator training program or endorse specific providers but will approve PSOs and PAM operators that have successfully completed courses that meet the curriculum and training requirements referenced below and further specified in the regulatory text at the end of this rulemaking.

NMFS will provide PSO and PAM operator approvals in the context of the need to ensure PSOs and PAM operators have the necessary training and/or experience to carry out their duties competently. In order for PSOs and PAM operators to be approved, NMFS must review and approve PSO and PAM operator resumes indicating successful completion of an acceptable training course. PSOs and PAM operators must have previous experience observing marine mammals and must have the ability to work with all required and relevant software and equipment. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditional approval may be given to one who is trained but has not yet attained the requisite experience. An unconditional approval is given to one who is trained and has attained the necessary experience. The specific requirements for conditional and unconditional approval can be found in the regulatory text at the end of this rulemaking.

Conditionally-approved PSOs and PAM operators would be paired with an unconditional-approved PSO (or PAM operator, as appropriate) to ensure that the quality of marine mammal observations and data recording is kept consistent. Additionally, activities requiring PSO and/or PAM operator monitoring must have a lead on duty. The visual PSO field team, in conjunction with the PAM team (*i.e.*, marine mammal monitoring team), would have a lead member (designated as the "Lead PSO" or "Lead PAM operator") who would be required to meet the unconditional approval standard.

Although PSOs and PAM operators must be approved by NMFS, third-party observer providers and/or companies seeking PSO and PAM operator staffing should expect that those having satisfactorily completed acceptable training and with the requisite experience (if required) will be quickly approved. Revolution Wind is required to request PSO and PAM operator approvals 60 days prior to those personnel commencing work. An initial

list of previously approved PSO and PAM operators must be submitted by Revolution Wind at least 30 days prior to the start of the project. Should Revolution Wind require additional PSOs or PAM operators throughout the project, Revolution Wind must submit a subsequent list of pre-approved PSOs and PAM operators to NMFS at least 15 days prior to planned use of that PSO or PAM operator. A PSO may be trained and/or experienced as both a PSO and PAM operator and may perform either duty, pursuant to scheduling requirements (and vice versa).

A minimum number of PSOs would be required to actively observe for the presence of marine mammals during certain project activities with more PSOs required as the mitigation zone sizes increase. A minimum number of PAM operators would be required to actively monitor for the presence of marine mammals during foundation installation and UXO/MEC detonation. The types of equipment required (*e.g.*, big eyes on the pile driving vessel) are also designed to increase marine mammal detection capabilities. Specifics on these types of requirements can be found in the regulations at the end of this rulemaking. In summary, at least three PSOs and one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be on-duty and actively monitoring per platform during foundation installation and each UXO/MEC detonation event; at least two PSOs must be on duty during cable landfall construction (vibratory pile installation and removal of sheet piles or pneumatic hammering of casing pipes); at least one PSO must be on-duty during HRG surveys conducted during daylight hours; and at least two PSOs must be on-duty during HRG surveys conducted during nighttime.

In addition to monitoring duties, PSOs and PAM operators are responsible for data collection. The data collected by PSO and PAM operators and subsequent analysis provide the necessary information to inform an estimate of the amount of take that occurred during the project, better understand the impacts of the project on marine mammals, address the effectiveness of monitoring and mitigation measures, and to adaptively manage activities and mitigation in the future. Data reported includes information on marine mammal sightings, activity occurring at time of sighting, monitoring conditions, and if mitigative actions were taken. Specific data collection requirements are contained within the regulations at the end of this rulemaking.

Revolution Wind is required to submit a Pile Driving and UXO/MEC Marine Mammal Monitoring Plan and a PAM Plan to NMFS 180 days in advance of foundation installation activities. The Plan must include details regarding PSO monitoring and PAM protocols and equipment proposed for use. More specifically, the PAM Plan must include a description of all proposed PAM equipment, address how the proposed PAM must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind as described in "NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs" (Van Parijs *et al.*, 2021). NMFS must approve the plan prior to foundation installation activities or UXO/MEC detonation commencing. Specific details on NMFS' PSO or PAM operator qualifications and requirements can be found in § 217.275(a) at the end of this rulemaking. Additional information can be found in Revolution Wind's Protected Species Mitigation and Monitoring Plan (PSMMP) (Appendix B) found in their ITA application on NMFS' website at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy>.

Sound Field Verification

Revolution Wind must conduct SFV measurements during all UXO/MEC detonations and for all impact pile-driving activities associated with the installation of, at minimum, the first three monopile foundations. SFV measurements must continue until at least three consecutive piles demonstrate distances to thresholds are at or below those modeled assuming 10 dB of attenuation. Subsequent SFV measurements are also required should larger piles be installed or additional piles be driven that are anticipated to produce longer distances to harassment isopleths than those previously measured (*e.g.*, higher hammer energy, greater number of strikes). The measurements and reporting associated with SFV can be found in the regulatory text at the end of this rulemaking. The requirements are extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that Revolution Wind is required to make adjustments quickly (*e.g.*, ensure bubble curtain hose maintenance, check bubble curtain air pressure supply, add additional sound attenuation, *etc.*) to ensure marine mammals are not

experiencing noise levels above those considered in this analysis. For recommended SFV protocols for impact pile driving, please consult ISO 18406 “Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving” (2017).

Reporting

Prior to any construction activities occurring, Revolution Wind would provide a report to NMFS Office of Protected Resources that demonstrates that all required training for Revolution Wind personnel, which includes the vessel crews, vessel captains, PSOs, and PAM operators have completed all required trainings.

NMFS would require standardized and frequent reporting from Revolution Wind during the life of the regulations and LOA. All data collected relating to the Project would be recorded using industry-standard software (*e.g.*, Mysticetus or a similar software) installed on field laptops and/or tablets. Revolution Wind is required to submit weekly, monthly, annual, and situational reports. The specifics of what we require to be reported can be found in the regulatory text at the end of this final rule.

Weekly Report—During foundation installation activities, Revolution Wind would be required to compile and submit weekly marine mammal monitoring reports for foundation installation pile driving to NMFS Office of Protected Resources that document the daily start and stop of all pile-driving activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise abatement system(s) (*e.g.*, system type, distance deployed from the pile, bubble rate, *etc.*). Weekly reports will be due on Wednesday for the previous week (Sunday–Saturday). The weekly reports are also required to identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, weekly reports would no longer be required.

Monthly Report—Revolution Wind is required to compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, all detections of marine mammals, and any mitigative

actions taken. Monthly reports would be due on the 15th of the month for the previous month. The monthly report would also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, monthly reports would no longer be required.

Annual Reporting—Revolution Wind is required to submit an annual marine mammal monitoring (both PSO and PAM) report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year describing, in detail, all of the information required in the monitoring section above. A final annual report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report.

Final 5-Year Reporting—Revolution Wind must submit its draft 5-year report(s) to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. Information contained within this report is described at the beginning of this section.

Situational Reporting—Specific situations encountered during the development of the Project requires immediate reporting. For instance, if a North Atlantic right whale is observed at any time by PSOs or project personnel, the sighting must be immediately (if not feasible, as soon as possible and no longer than 24 hours after the sighting) reported to NMFS. If a North Atlantic right whale is acoustically detected at any time via a project-related PAM system, the detection must be reported as soon as possible and no longer than 24 hours after the detection to NMFS via the 24-hour North Atlantic right whale Detection Template (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Calling the hotline is not necessary when reporting PAM detections via the template.

If a sighting of a stranded, entangled, injured, or dead marine mammal occurs, the sighting would be reported to NMFS Office of Protected Resources, the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866-755-6622), and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a project activity, Revolution Wind must immediately cease all activities until NMFS Office of

Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Revolution Wind may not resume their activities until notified by NMFS Office of Protected Resources.

In the event of a vessel strike of a marine mammal by any vessel associated with the Project, Revolution Wind must immediately report the strike incident. If the strike occurs in the Greater Atlantic region (Maine to Virginia), Revolution Wind must call the NMFS Greater Atlantic Stranding Hotline. Separately, Revolution Wind must also immediately report the incident to NMFS Office of Protected Resources and GARFO. Revolution Wind must immediately cease all on-water activities until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Revolution Wind may not resume their activities until notified by NMFS.

In the event of any lost gear associated with the fishery surveys, Revolution Wind must report to the GARFO as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

The specifics of what NMFS Office of Protected Resources requires to be reported is listed at the end of this rulemaking in the regulatory text.

Sound Field Verification—Revolution Wind is required to submit interim SFV reports after each foundation installation and UXO/MEC detonation monitored as soon as possible but within 48 hours. A final SFV report for all monopile foundation installation and UXO/MEC detonations would be required within 90 days following completion of acoustic monitoring.

Adaptive Management

The regulations governing the take of marine mammals incidental to Revolution Wind’s construction activities contain an adaptive management component. Our understanding of the effects of offshore

wind construction activities (e.g., acoustic and explosive stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The monitoring and reporting requirements in this final rule provide NMFS with information that helps us to better understand the impacts of the project's activities on marine mammals and informs our consideration of whether any changes to mitigation and monitoring are appropriate. The use of adaptive management allows NMFS to consider new information and modify mitigation, monitoring, or reporting requirements, as appropriate, with input from Revolution Wind regarding practicability, if such modifications will have a reasonable likelihood of more effectively accomplishing the goal of the measures.

The following are some of the possible sources of new information to be considered through the adaptive management process: (1) results from monitoring reports, including the weekly, monthly, situational, and annual reports required; (2) results from marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. During the course of the rule, Revolution Wind (and other LOA Holders conducting offshore wind development activities) are required to participate in one or more adaptive management meetings convened by NMFS and/or BOEM, in which the above information will be summarized and discussed in the context of potential changes to the mitigation or monitoring measures.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" by mortality, serious injury, Level A harassment and Level B harassment, we

consider other factors, such as the likely nature of any behavioral responses (e.g., intensity, duration), the context of any such responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

In the Estimated Take section in this preamble, we discuss the estimated maximum number of takes by Level A harassment and Level B harassment that could occur incidental to Revolution Wind's specified activities based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (e.g., the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this final rule, we evaluate the likely impacts of the enumerated harassment takes that are authorized in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As described above, no serious injury or mortality is expected or authorized for any species or stock.

The Description of the Specified Activities section of this preamble describes Revolution Wind's specified activities that may result in take of marine mammals and an estimated schedule for conducting those activities. Revolution Wind has provided a realistic construction schedule although we recognize schedules may shift for a variety of reasons (e.g., weather or supply delays). However, the total amount of take would not exceed the 5-year totals and maximum annual total in any given year indicated in Tables 27 and 28, respectively.

We base our analysis and negligible impact determination on the maximum number of takes that could occur and

are authorized annually and across the effective period of these regulations and extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals and the number and context of the individuals affected. As stated before, the number of takes, both maximum annual and 5-year total, alone are only a part of the analysis.

To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination section that applies to all the species listed in Table 2 given that some of the anticipated effects of the project's construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds which have broad life history traits that support an overarching discussion of some factors considered within the analysis for those groups (e.g., habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis, where appropriate (e.g., North Atlantic right whales given their population status). Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of the project activities and then providing species- or stock-specific information allows us to avoid duplication while ensuring that we have analyzed the effects of the specified activities on each affected species or stock. It is important to note that in the group or species sections, we base our negligible impact analysis on the maximum annual take that is predicted under the 5-year rule; however, the majority of the impacts are associated with WTG foundation and OSS foundation installation, which will occur largely within the first year of the effective period of these regulations (2023–2024). The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (see Tables 27 and 28).

As described previously, no serious injury or mortality is anticipated or authorized in this rule. Any Level A harassment authorized would be in the form of auditory injury (*i.e.*, PTS) and not non-auditory injury (e.g., lung injury or gastrointestinal injury from UXO/MEC detonation). The number of takes by harassment Revolution Wind requested and NMFS is authorizing is based on exposure models that consider the outputs of acoustic source and

propagation models and other data such as frequency of occurrence or group sizes. Several conservative parameters and assumptions are ingrained into these models, such as assuming forcing functions that consider direct contact with piles (*i.e.*, no cushion allowances) and application of the average summer sound speed profile to all months within a given season. The exposure model results do not reflect any mitigation measures (other than 10-dB sound attenuation for impact pile driving and UXO/MEC detonations) or avoidance response. The number of takes requested and authorized also reflects careful consideration of other data (*e.g.*, group size data) and for Level A harassment of some large whales, the consideration of mitigation measures. For all species, the number of take to be authorized represents the maximum amount of Level A harassment and Level B harassment that could occur.

Behavioral Disturbance

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration (though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.*, sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter and Doukara, 2012; Falcone *et al.*, 2017). As described in the Potential Effects to Marine Mammals and their Habitat section of the proposed rule, the intensity and duration of any impact resulting from exposure to Revolution Wind's activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.*, reproductive status, age class, health) and an individual's experience with similar sound sources. Southall *et al.* (2021), Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.*, behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources.

Harassment of marine mammals may result in behavioral modifications (*e.g.*, avoidance, temporary cessation of foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower level physiological stress responses (*e.g.*, change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect Revolution Wind's activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time, or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response, and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

Many species perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than one day or recur on subsequent days (Southall *et al.*, 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.*, 2008; Barlow *et al.*, 2020; Henderson *et al.*,

2016; Schorr *et al.*, 2014). It is important to note the water depth in the Project Area is shallow (ranging from 2 to 40 m in the RWEC and 24 to 50 m in the Lease Area) and deep diving species, such as sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is also important to identify that the estimated number of takes does not necessarily equate to the number of individual animals Revolution Wind expects to harass (which is lower), but rather to the instances of take (*i.e.*, exposures above the Level B harassment thresholds) that may occur. These instances may represent either brief exposures of seconds for UXO/MEC detonations, seconds to minutes for HRG surveys, or, in some cases, longer durations of exposure within a day (*e.g.*, pile driving). Some individuals of a species may experience recurring instances of take over multiple days throughout the year, while some members of a species or stock may experience one exposure as they move through an area, which means that the number of individuals taken is smaller than the total estimated takes. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (*e.g.*, some of the mysticetes), it is more likely that each take represents a different individual, whereas for non-migrating species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be taken across multiple days.

For Revolution Wind, impact pile driving of foundation piles is most likely to result in a higher magnitude and severity of behavioral disturbance than other activities (*i.e.*, vibratory pile driving, pneumatic hammering, UXO/MEC detonations, and HRG surveys). Impact pile driving has higher source levels and longer durations (on an annual basis) than vibratory pile driving and HRG surveys. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation. While UXO/MEC detonations may have higher source levels, impact pile driving is planned for longer durations (*i.e.*, a maximum of 13 UXO/MEC detonations are planned, which would result in only instantaneous exposures). While impact pile driving for foundation installation is anticipated to be most impactful for

these reasons, impacts are minimized, to the extent practicable, through implementation of mitigation measures, including use of a sound attenuation system, soft-starts, the implementation of clearance zones that would facilitate a delay to pile driving commencement, and implementation of shutdown zones. For example, given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is disturbing prior to becoming exposed to very loud noise levels. The requirement to couple visual monitoring and PAM before and during all foundation installation and UXO/MEC detonations will increase the overall capability to detect marine mammals compared to one method alone. Measures such as the requirement to apply sound attenuation devices and implement clearance zones also apply to UXO/MEC detonation(s), which also have the potential to elicit more severe behavioral reactions in the unlikely event that an animal is relatively close to the explosion in the instant that it occurs; hence, severity of behavioral responses are expected to be lower than would be the case without mitigation.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over numerous or sequential days, impacts to individual fitness are not anticipated. Also, the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present—avoiding biologically important habitats will provide opportunities to compensate for reduced or lost foraging (Keen *et al.*, 2021). Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.*, 2018; Harris *et al.*, 2017; King *et al.*, 2015; National Academy of Science, 2017; New *et al.*, 2014; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015).

Temporary Threshold Shift (TTS)

TTS is one form of Level B harassment that marine mammals may incur through exposure to Revolution Wind's activities and, as described earlier, the takes by Level B harassment may represent takes in the form of behavioral disturbance, TTS, or both. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed rule, in general, TTS can

last from a few minutes to days, be of varying degree and occur across different frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact and vibratory pile driving, pneumatic hammering, and UXO/MEC detonations are broadband noise sources but generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz but with a small amount energy ranging up to 20 kHz); therefore, in general and all else being equal, we anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.*, mysticetes) than other marine mammal hearing groups and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given the frequencies produced by these activities do not span entire hearing ranges for any particular species. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalizations, the frequency range of TTS from Revolution Wind's pile driving and UXO/MEC detonation activities would not typically span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. The mitigation measures required by NMFS further reduce the potential for TTS in mysticetes.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously (see to Estimated Take section of this preamble). However, source level alone is not a predictor of TTS. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the required mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in the Potential Effects of the Specified Activities on Marine Mammals and their Habitat section of the proposed rule), some using exposures of almost an hour

in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes) and we note that while the pile driving activities last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. UXO/MEC detonations also have the potential to result in TTS. However, given the duration of exposure is extremely short (milliseconds), the degree of TTS (*i.e.*, the amount of dB shift) is expected to be small and TTS duration is expected to be short (minutes to hours). Overall, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS overlapped the entirety of a critical hearing range, it is unlikely that TTS of the nature expected to result from the project's activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Permanent Threshold Shift (PTS)

NMFS is authorizing a small amount of take by PTS to some marine mammal individuals. The numbers of authorized annual takes by Level A harassment are relatively low for all marine mammal stocks and species (Table 27). The only activities incidental to which we anticipate PTS may occur is from exposure to impact pile driving and UXO/MEC detonation, which produces sounds that are both impulsive and primarily concentrated in the lower frequency ranges (below 1 kHz) (David, 2006; Krumpel *et al.*, 2021).

There are no PTS data on cetaceans and only one instance of PTS being induced in older harbor seals (Reichmuth *et al.*, 2019). However, available TTS data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.*, 2007; NMFS, 2018; Southall *et al.*, 2019)) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We would anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving or instantaneous UXO/MEC

detonation (*i.e.*, the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from either impact pile driving or UXO/MEC detonation, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. Revolution Wind estimates 13 UXO/MECs may be detonated and the exposure analysis conservatively assumes that all of the UXOs/MECs found would consist of the largest charge weight of UXO/MEC (E12; 454 kg). However, it is highly unlikely that all charges would be the maximum size; thus, the amount of Level A harassment that may occur incidental to the detonation of the UXO/MECs is likely less than what is estimated here. In addition, during impact pile driving, given sufficient notice through use of soft-start prior to implementation of full hammer energy during impact pile driving, marine mammals are expected to move away from a sound source that is disturbing prior to it resulting in severe PTS.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.*, decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Also, though, masking can result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur and, further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency.

As our analysis has indicated, for this project we expect that impact pile driving foundations have the greatest potential to mask marine mammal signals, and this pile driving may occur

for several, albeit intermittent, hours per day, for multiple days per year. Masking is fundamentally more of a concern at lower frequencies (which are pile driving dominant frequencies), because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low frequency calls of mysticetes, as well as many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. However, the area in which masking would occur for all marine mammal species and stocks (*e.g.*, predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock. In summary, the nature of Revolution Wind's activities, paired with habitat use patterns by marine mammals, does not support the likelihood that the level of masking that could occur would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Impact pile driving of monopile foundations and UXO/MEC detonation may result in fish and invertebrate mortality or injury very close to the source, and all of Revolution Wind's activities may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of a noise attenuation system during impact pile driving and UXO/MEC detonation would further limit the degree of impact (again noting UXO/MEC detonation would be limited to 13 events over 5 years). Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range; however, due to the relatively small area of the habitat that may be affected at any given time (*e.g.*, around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence is not anticipated to impact marine mammal habitat as these would be buried, and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals prey to the extent they would be unavailable for consumption.

The presence of wind turbines within the Lease Area could have longer-term impacts on marine mammal habitat, as the project would result in the persistence of the structures within

marine mammal habitat for more than 30 years. The presence of structures such as wind turbines is, in general, likely to result in certain oceanographic effects in the marine environment and may alter aggregations and distribution of marine mammal zooplankton prey through changing the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.*, 2021; Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022).

As discussed in the Potential Effects of the Specified Activities on Marine Mammals and their Habitat section of the proposed rule, the project would consist of no more than 81 foundations (79 WTGs and 2 OSSs) in the Lease Area, which will gradually become operational following construction completion, likely in Year 2 of the rule (2024–2025). While there are likely to be oceanographic impacts from the presence of the Revolution Wind project, meaningful oceanographic impacts relative to stratification and mixing that would significantly affect marine mammal habitat and prey over large areas in key foraging habitats during the effective period of the regulations are not anticipated (which considers 2–3 years of turbine operation). For these reasons, if oceanographic features are affected by the project during the effective period of these regulations, the impact on marine mammal habitat and their prey is likely to be comparatively minor; therefore, we are not authorizing take due to habitat and prey impacts.

The Revolution Wind Biological Opinion provided an evaluation of the presence and operation of the Project on, among other species, marine mammals and their prey. While the consultation considered the life of the project (25+ years), we considered the potential for the habitat and prey impacts to occur within the 5-year effective time frame of this rule. Overall, the Biological Opinion concluded that impacts from loss of sandy bottom habitat (from the presence of turbines and placement of scour protection) as well as any beneficial reef effects are expected to be so small that they cannot be meaningfully measured, evaluated, or detected and are, therefore, insignificant. The Biological Opinion also concluded that the presence and operation of the wind farm may change the distribution of plankton with the wind farm, these changes are not expected to affect the oceanographic forces transporting zooplankton into the area. Therefore, the Biological Opinion concluded that the overall reduction in

biomass of plankton is not an anticipated outcome of operating the Project. Thus, because changes in the biomass of zooplankton are not anticipated, any higher trophic level impacts are also not anticipated. That is, no effects to pelagic fish or benthic invertebrates that depend on plankton as forage food are expected to occur. Zooplankton, fish and invertebrates are all considered marine mammal prey and, as fully described in the Biological Opinion, measurable, detectable or significant changes to marine mammal prey abundance and distribution from wind farm operation is not anticipated.

Mitigation To Reduce Impacts on All Species

This rulemaking includes a variety of mitigation measures designed to minimize impacts on all marine mammals to the extent practicable with a focus on North Atlantic right whales (the latter is described in more detail below). For impact pile driving of foundation piles and UXO/MEC detonations, nine overarching mitigation measures are required, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones that would trigger delay or shutdown); (3) use of PAM to acoustically detect marine mammals with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start for impact pile driving of foundations; (7) use of noise attenuation technology; (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Revolution Wind personnel must be reported to PSOs; (9) sound field verification monitoring; and (10) Vessel Strike Avoidance measures to reduce the risk of a collision with a marine mammal and vessel. For cofferdam, casing pipe, and goal post installation and removal, we are requiring five overarching mitigation measures: (1) time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection with specifically designated zones that would trigger a delay or shutdown); (3) implementation of clearance zones; (4) implementation of shutdown zones; and (5) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal

sighting(s) by Revolution Wind personnel must be reported to PSOs. Lastly, for HRG surveys, we are requiring six measures: (1) measures specifically for Vessel Strike Avoidance; (2) required use of one PSO during daytime operations and two PSOs utilizing specialized night-vision technologies during nighttime operations for HRG surveys; (3) implementation of clearance zones; (4) implementation of shutdown zones; (5) use of ramp-up of acoustic sources; and (6) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Revolution Wind personnel must be reported to PSOs.

NMFS prescribes mitigation measures based on the following rationale. For activities with large harassment isopleths, Revolution Wind is committed to reducing the noise levels generated to the lowest levels practicable and is required to ensure that they do not exceed a noise footprint above that which was modeled, assuming a 10-dB attenuation. Use of a soft-start during impact pile driving will allow animals to move away from (*i.e.*, avoid) the sound source prior to applying higher hammer energy levels needed to install the pile (Revolution Wind will use the minimum amount of hammer energy to install piles). Similarly, ramp-up during HRG surveys will allow animals to move away and avoid the acoustic sources before they reach their maximum energy level (Revolution Wind will use the lowest energy level practicable to conduct survey activities). For all activities (with some exception for UXO/MEC detonations, which would not have a shutdown zone), clearance zone and shutdown zone implementation, which are required when marine mammals are within given distances associated with certain impact thresholds for all activities, will reduce the magnitude and severity of marine mammal take. Additionally, the use of multiple PSOs (WTG and OSS foundation installation, temporary cofferdam, casing pipe, or goal post installation and removal, UXO/MEC detonations, HRG surveys), PAM, operators (for impact foundation installation and UXO/MEC detonations), and maintaining awareness of marine mammal sightings reported in the region (WTG and OSS foundation installation, temporary cofferdam casing pipe, or goal post installation and removal, UXO/MEC detonations, HRG surveys) will aid in detecting marine mammals that would trigger the implementation of the mitigation measures. The reporting requirements, including SFV

reporting for foundation installation, foundation operation, and UXO/MEC detonations will assist NMFS in identifying if impacts beyond those analyzed in this final rule are occurring, potentially leading to the need to enact adaptive management measures in addition to or in place of the mitigation measures.

Mysticetes

Six mysticete species (comprising six stocks) of cetaceans (North Atlantic right whale, blue whale, humpback whale, fin whale, sei whale, and minke whale) may be taken by harassment. These species, to varying extents, utilize the specified geographic region, including the Project Area, for the purposes of migration, foraging, and socializing. Mysticetes are in the low-frequency hearing group.

Behavioral data on mysticete reactions to pile driving noise are scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS in some cases.

Mysticetes encountered in the Project Area are expected to be migrating through and/or engaged in foraging behavior. The extent to which an animal engages in these behaviors in the area is species-specific and varies seasonally. Many mysticetes are expected to predominantly be migrating through the Project Area towards or from primary feeding habitats (*e.g.*, Cape Cod Bay, Great South Channel, and Gulf of St. Lawrence). While we have acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving and UXO/MEC detonations, given the very short duration of and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging are expected to be minor. Whales temporarily displaced from the Project

Area are expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitats, including to the east near Nantucket Shoals. In addition, any displacement of whales or interruption of foraging bouts would be expected to be relatively temporary in nature.

The potential for repeated exposures is dependent upon the residency time of whales with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area to be more likely exposed repeatedly. For mysticetes, where relatively low numbers of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock; see Table 28) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a different individual; the behavioral impacts would, therefore, be expected to occur within a single day within a year and is not be expected to impact reproduction or survival. Species with longer residence time in the Project Area may be subject to repeated exposures across multiple days.

In general, the duration of exposures would not be continuous throughout any given day and pile driving would not occur on all consecutive days within a given year due to weather delays or any number of logistical constraints Revolution Wind has identified. Species-specific analysis regarding potential for repeated exposures and impacts is provided below.

Humpback whales, minke whales, fin whales and sei whales are the mysticete species for which PTS is anticipated and authorized. As described previously, PTS for mysticetes from some project activities may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile driving noise is concentrated (*i.e.*, only a small subset of their expected hearing range) and would not be expected to impact reproductive success or survival.

North Atlantic Right Whale

North Atlantic right whales are listed as endangered under the ESA and as both depleted and strategic under the MMPA. As described in the Potential Effects to Marine Mammals and Their Habitat section of the proposed rule,

North Atlantic right whales are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.*, Corkeron *et al.*, 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.*, 2020; Stewart *et al.*, 2021; Stewart *et al.*, 2022). As described below, a UME has been designated for North Atlantic right whales. Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. No injury or mortality is anticipated or authorized for this species.

For North Atlantic right whales, this rule authorizes up to 56 takes, by Level B harassment, over the 5-year period, with a maximum annual allowable take of 44 (equating to approximately 13 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers expected in the years following foundation installation (*e.g.*, years when only HRG surveys would be occurring).

Southern New England, including the Project Area, is part of a known migratory corridor for North Atlantic right whales and may be a stopover site for migrating North Atlantic right whales moving to or from southeastern calving grounds and northern foraging grounds. However, North Atlantic right whales range outside of the Project Area for their main feeding, breeding, and calving activities. Additional qualitative observations in southern New England include animals feeding and socializing (Quintana-Rizzo *et al.*, 2021). North Atlantic right whales are primarily concentrated in the northeastern and southeastern sections of the Massachusetts Wind Energy Area (MA WEA) (*i.e.*, east of the Project Area) during the summer (June–August) and winter (December–February) while distribution likely shifts to the west, closer to the Project Area, into the Rhode Island/Massachusetts Wind Energy Area (RI/MA WEA) in the spring (March–May) (Quintana-Rizzo *et al.*, 2021). Approximately 23 percent of the right whale population is present in southern New England from December through May, and the mean residence time has tripled to an average of 13 days during these months (Quintana-Rizzo *et al.*, 2021).

In general, North Atlantic right whales in the Project Area are expected to be engaging in migratory and/or feeding behavior. Migrating whales would typically be moving through the

Project Area, rather than lingering for extended periods of time; however, foraging whales may remain in the Project Area, with an average residence time of 13 days between December and May (Quintana-Rizzo *et al.*, 2021). It is important to note that the activities that would occur from December through April that may impact North Atlantic right whales using the habitat for foraging or migration would be primarily HRG surveys, which are not expected to result in very high received levels given the rapid transmission loss resulting in the small (less than 150 m) Level B harassment zone. Across all years, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure given the duration between exposures.

As described in the Description of Marine Mammals in the Geographic Area section of the Proposed Rule, North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality, serious injury, or injury of North Atlantic right whales as a result of the project is expected or authorized. Any disturbance to North Atlantic right whales due to Revolution Wind's activities is expected to result in temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or authorized and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME.

As described in the general *Mysticetes* section above, foundation installation is likely to result in the highest amount of annual take and is of greatest concern given loud source levels. This activity is limited to up to 79 days assuming Revolution Wind is only able to install one foundation per day over a maximum of 1 year, (although it will likely be less as Revolution Wind anticipates being able to install more than one pile per day throughout the construction period), during times when, based on the best available scientific data, North Atlantic right whales are less frequently encountered

due to their migratory behavior. The potential types, severity, and magnitude of impacts are also anticipated to mirror that described in the general *Mysticetes* section above, including avoidance (the most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (e.g., change in respiration, change in heart rate). Importantly, the effects of the activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as migration and foraging for North Atlantic right whales. These takes are expected to result in temporary behavioral reactions, such as slight displacement (but not abandonment) of migratory habitat or temporary cessation of feeding. Further, given many of these exposures are generally expected to occur to different individual right whales migrating through (i.e., many individuals would not be impacted on more than one day in a year), with some subset potentially being exposed on no more than a few days within the year, they are unlikely to result in energetic consequences that could affect reproduction or survival of any individuals.

Overall, NMFS expects that any behavioral harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging success, as only temporary avoidance of an area during construction is expected to occur. As described previously, North Atlantic right whales migrate, forage, or socialize in the Project Area but are not expected to remain in this habitat for extensive durations relative to core foraging habitats to the east, south of Nantucket and Martha's Vineyard, Cape Cod Bay, or the Great South Channel (Quintana-Rizzo *et al.*, 2021). Any temporarily displaced animals would be able to return to or continue to travel through the Project Area and subsequently utilize this habitat once activities have ceased.

Although acoustic masking may occur in the vicinity of the foundation installation activities, based on the acoustic characteristics of noise associated with pile driving (e.g., frequency spectra, short duration of exposure) and construction surveys (e.g., intermittent signals), NMFS expects masking effects to be minimal (e.g., impact pile driving, pneumatic hammering) to none (e.g., HRG surveys). In addition, masking would likely only occur during the period of time that a North Atlantic right whale is in the relatively close vicinity of pile driving, which is expected to be intermittent

within a day and confined to the months in which North Atlantic right whales are at lower densities and primarily moving through the area. TTS is another potential form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving; however, any TTS would likely be of low amount, limited duration, and limited to frequencies where most construction noise is centered (below 2 kHz). NMFS expects that right whale hearing sensitivity would return to pre-exposure levels shortly after migrating through the area or moving away from the sound source.

As described in the Potential Effects to Marine Mammals and Their Habitat section of the proposed rule, the distance of the receiver to the source influences the severity of response with greater distances typically eliciting less severe responses. NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and cows with older calves (in spring) and that these animals may slightly alter their migration course in response to any foundation pile driving; however, we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile-driving activities may occur, we anticipate any avoidance behavior of migratory North Atlantic right whales would be similar to that of gray whales (Tyack *et al.*, 1983), on the order of hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by the project's activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment of survival. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production while not being forced out of this portion of their habitat.

North Atlantic right whale presence in the Project Area is year-round. However, abundance during summer months is lower compared to the winter months with spring and fall serving as "shoulder seasons" wherein abundance waxes (fall) or wanes (spring). Given this year-round habitat usage, in recognition that where and when whales may actually occur during project activities is unknown as it depends on the annual migratory behaviors, NMFS is requiring a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable.

These mitigation measures (e.g., seasonal/daily work restrictions, vessel separation distances, reduced vessel speed) would not only avoid the likelihood of vessel strikes but also would minimize the severity of behavioral disruptions by minimizing impacts (e.g., through sound reduction using attenuation systems and reduced temporal overlap of project activities and North Atlantic right whales). This would further ensure that the number of takes by Level B harassment that are estimated to occur are not expected to affect reproductive success or survivorship by detrimental impacts to energy intake or cow/calf interactions during migratory transit. However, even in consideration of recent habitat-use and distribution shifts, Revolution Wind would still be installing foundations when the presence of North Atlantic right whales is expected to be lower.

As described in the Description of Marine Mammals in the Specific Geographic Region section in the preamble of this rule, Revolution Wind would be constructed within the North Atlantic right whale migratory corridor BIA, which represent areas and months within which a substantial portion of a species or population is known to migrate. The Lease Area is relatively small compared with the migratory BIA area (approximately 339 km² for OCS-A-0486 versus the size of the full North Atlantic right whale migratory BIA, 269,448 km²). Because of this, the overall North Atlantic right whale migration is not expected to be impacted by the proposed activities. Although North Atlantic right whales forage to some degree in the Project Area, there are no known breeding, or calving areas within the Project Area. Prey species are mobile (e.g., calanoid copepods can initiate rapid and directed escape responses) and are broadly distributed throughout the Project Area. Therefore, any impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales is the seasonal moratorium on all foundation installation activities from January 1 through April 30 and the limitation on these activities in December (e.g., only work with approval from NMFS) when North Atlantic right whale abundance in the Project Area is expected to be highest. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile driving noise above the Level B harassment threshold during their annual spring migration through the Project Area from calving grounds to

primary foraging grounds (*e.g.*, Cape Cod Bay). UXO/MEC detonations would also be restricted from December 1 through April 30, annually. NMFS expects that exposures to North Atlantic right whales would be reduced due to the additional mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed.

Pile driving and UXO/MEC detonations may only begin in the absence of North Atlantic right whales (based on visual and passive acoustic monitoring). If pile driving or UXO/MEC detonations have commenced, NMFS anticipates North Atlantic right whales would avoid the area, utilizing nearby waters to carry on pre-exposure behaviors. However, foundation installation activities must be shut down if a North Atlantic right whale is sighted at any distance or acoustically detected at any distance within the PAM monitoring zone, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere if North Atlantic right whales are seen within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to foundation installation or UXO/MEC detonation noise, it is unlikely a North Atlantic right whale would approach the sound source locations to the degree that they would purposely expose themselves to very high noise levels. This is because typical observed whale behavior demonstrates likely avoidance of harassing levels of sound where possible (Richardson *et al.*, 1985). These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the mitigation measures (*e.g.*, delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low.

The clearance and shutdown measures are most effective when detection efficiency is maximized, as the measures are triggered by a sighting or acoustic detection. To maximize detection efficiency, NMFS requires the combination of PAM and visual observers. NMFS is requiring communication protocols with other project vessels and other heightened awareness efforts (*e.g.*, daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher

noise energy levels), PSO detection efficacy would increase, the whale would be detected, and a delay to commencing foundation installation or shutdown (if feasible) would occur. In addition, the implementation of a soft-start for impact pile driving would provide an opportunity for whales to move away from the source if they are undetected, reducing received levels. The UXO/MEC detonations mitigation measures described above would further reduce the potential to be exposed to high received levels.

For HRG surveys, the maximum distance to the Level B harassment threshold is 141 m. The estimated take by Level B harassment associated with HRG surveys is to account for any potential exposures of North Atlantic right whales to active acoustic sources should there be a delay shutting it down (if called for). However, the authorized Level B harassment takes do not account for mitigation and monitoring, and because of the short maximum distance to the Level B harassment threshold, the requirement that vessels maintain a distance of 500 m from any North Atlantic right whales, the fact whales are unlikely to remain in close proximity to an HRG survey vessel for any length of time, and that the acoustic source would be shut down if a North Atlantic right whale is observed within 500 m of the source, any exposure to noise levels above the harassment threshold (if any) would be very brief. To further minimize exposures, ramp-up of sub-bottom profilers must be delayed during the clearance period if PSOs detect a North Atlantic right whale (or any other ESA-listed species) within 500 m of the acoustic source. With implementation of the mitigation requirements, take by Level A harassment is not anticipated and therefore, not authorized. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior. Given the high level of precautions taken to minimize both the number and intensity of Level B harassment on North Atlantic right whales, it is unlikely that the anticipated low-level exposures would lead to reduced reproductive success or survival.

As described above, no serious injury or mortality, or Level A harassment of North Atlantic right whales is anticipated or authorized. Extensive North Atlantic right whale-specific mitigation measures (beyond the robust suite required for all species) are expected to further minimize the amount and severity of Level B

harassment. Given the documented habitat use within the Project Area, many of the individuals predicted to be taken (including no more than 56 instances of take, by Level B harassment) over the course of the 5-year rule (with an annual maximum of no more than 44) would be impacted on only 1 or 2 days in a year, although it is possible that repeated exposures beyond this may occur should North Atlantic right whales briefly use the Project Area as a 'stopover' site and stay or swim in and out of the areas with pile driving for more than day. Further, any impacts to North Atlantic right whales are expected to be in the form of lower level behavioral disturbance.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take (by Level B harassment) anticipated and authorized would have a negligible impact on the North Atlantic right whale.

Blue Whale

The blue whale is listed as endangered under the ESA, and the Western North Atlantic stock is considered depleted and strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area, and there is no ongoing UME. The actual abundance of the stock is likely significantly greater than what is reflected in the SAR because the most recent population estimates are primarily based on surveys conducted in U.S. waters and the stock's range extends well beyond the U.S. exclusive economic zone (EEZ). No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to seven takes, by Level B harassment, over the 5-year period. The maximum annual allowable take by Level B harassment is three, which equates to approximately 0.73 percent of the stock abundance if each take were considered to be of a different individual. Based on the migratory nature of blue whales and the fact that there are neither feeding nor reproductive areas documented in or near the Project Area, and in consideration of the very low number of predicted annual takes, it is unlikely that the predicted instances of takes would represent repeat takes of any individual—in other words, each take

likely represents one whale exposed on 1 day within a year.

With respect to the severity of those individual takes by Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any potential TTS would be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of blue whales. Any hearing ability temporarily impaired from TTS is anticipated to return to pre-exposure conditions within a relatively short time period after the exposures cease. Any avoidance of the Project Area due to the activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and authorized will have a negligible impact on the western North Atlantic stock of blue whales.

Fin Whale

The fin whale is listed as endangered under the ESA, and the western North Atlantic stock is considered both depleted and strategic under the MMPA. No UME has been designated for this species or stock. No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to 52 takes, by harassment only, over the 5 year period. The maximum annual allowable take by Level A harassment and Level B harassment, is 4 and 40, respectively (combined, this annual take ($n=44$) equates to approximately 0.65 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given the project overlaps a small portion of a fin whale feeding BIA (2,933 km²) in the months the project will occur (March–October) and that southern New England is generally considered a feeding area, it is likely that some subset of the individual whales exposed could be taken several times annually

Level B harassment is expected to be in the form of behavioral disturbance, primarily resulting in avoidance of the Project Area where foundation installation is occurring and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of fin whales.

Fin whales are present in the waters off of New England year-round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras, North Carolina in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; CETAP, 1982; Hain *et al.*, 1992; Geo-Marine, 2010; BOEM 2012; Edwards *et al.*, 2015; Hayes *et al.*, 2022). In the Project Area, fin whales densities are highest in the winter and summer months (Roberts *et al.*, 2023) though detections do occur in spring and fall (Watkins *et al.*, 1987; Clark and Gagnon, 2002; Geo-Marine, 2010; Morano *et al.*, 2012). However, fin whales feed more extensively in waters in the Great South Channel north to the Gulf of Maine into the Gulf of St. Lawrence, areas north and east of the Project Area (Hayes *et al.*, 2023).

As described previously, the Project Area overlaps approximately 11 percent of a small fin whale feeding BIA (2,933 km²) east of Montauk Point, New York (Figure 2.3 in LaBrecque *et al.*, 2015) that is active from March to October. Foundation installations and UXO/MEC detonations have seasonal work restrictions such that the temporal overlap between these project activities and the active BIA timeframe would exclude the months of March and April. A separate larger year-round feeding BIA (18,015 km²) located to the east in the southern Gulf of Maine does not overlap with the Project Area and would thus not be impacted by project activities. We anticipate that if foraging is occurring in the Project Area and foraging whales are exposed to noise levels of sufficient strength, they would avoid the Project Area and move into the remaining 89 percent of the small feeding BIA to continue foraging without substantial energy expenditure or, depending on the time of year, travel to the larger year-round feeding BIA.

Given the documented habitat use within the area, some of the individuals taken would likely be exposed on

multiple days. However, low level impacts are generally expected from any fin whale exposure. Given the magnitude and severity of the impacts discussed above (including no more than 52 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 4 and 40, respectively), and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the western North Atlantic stock of fin whales.

Humpback Whale

The West Indies Distinct Population Segments (DPS) of humpback whales is not listed as threatened or endangered under the ESA but the Gulf of Maine stock, which includes individuals from the West Indies DPS, is considered strategic under the MMPA. However, as described in the Description of Marine Mammals in the Specific Geographic Region section of this preamble to the rule, humpback whales along the Atlantic Coast have been experiencing an active UME as elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately 40 percent had evidence of human interaction (vessel strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts, and take from vessel strike and entanglement is not authorized. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

The rule authorizes up to 106 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, is 9 and 77, respectively (combined, this maximum annual take ($n=86$) equates to approximately 6.16 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given that feeding is considered the principal activity of humpback whales in southern New England waters, it is likely that some subset of the individual

whales exposed could be taken several times annually.

Among the activities analyzed, impact pile driving is likely to result in the highest amount of Level A harassment annual take (n=9) of humpback whales. The maximum amount of authorized annual take by Level B harassment is highest for impact pile driving (n=77; WTG plus OSS foundations).

In the western North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the U.S. Feeding is generally considered to be focused in areas north of the Project Area, including in a feeding BIA in the Gulf of Maine/Stellwagen Bank/Great South Channel, but has been documented off the coast of southern New England and as far south as Virginia (Swingle *et al.*, 2006). Foraging animals tend to remain in the area for extended durations to capitalize on the food sources.

Assuming humpback whales who are feeding in waters within or surrounding the Project Area behave similarly, we expect that the predicted instances of disturbance could consist of some individuals that may be exposed on multiple days if they are utilizing the area as foraging habitat. Also similar to other baleen whales, if migrating, such individuals would likely be exposed to noise levels from the project above the harassment thresholds only once during migration through the Project Area.

For all the reasons described in the *Mysticetes* section above, we anticipate any potential PTS and TTS would be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels relatively shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Given the magnitude and severity of the impacts discussed above (including no more than 106 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 9 and 77 respectively), and in consideration of the required mitigation measures and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact

on the Gulf of Maine stock of humpback whales.

Minke Whale

Minke whales are not listed under the ESA, and the Canadian East Coast stock is neither considered depleted nor strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area. As described in the Description of Marine Mammals in the Specific Geographic Region section of this preamble, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to 21 takes by Level A harassment and 320 takes by Level B harassment over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment is 21 and 304, respectively (combined, this annual take (n=325) equates to approximately 1.48 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). As described in the Description of Marine Mammals in the Specific Geographic Region section, minke whales are common offshore the U.S. Eastern Seaboard with a strong seasonal component in the continental shelf and in deeper, off-shelf waters (CETAP, 1982; Hayes *et al.*, 2022). Spring through fall are times of relatively widespread and common acoustic occurrence on the continental shelf. From September through April, minke whales are frequently detected in deep-ocean waters throughout most of the western North Atlantic (Clark and Gagnon, 2002; Risch *et al.*, 2014; Hayes *et al.*, 2023). Because minke whales are migratory and their known feeding areas are north and east of the Project Area, including a feeding BIA in the southwestern Gulf of Maine and George's Bank, they would be more likely to be transiting through (with each take representing a separate individual), though it is possible that some subset of the individual whales exposed could be taken up to a few times annually.

As previously detailed in the Description of Marine Mammals in the Specific Geographic Region section, there is a UME for minke whales along the Atlantic coast, from Maine through South Carolina, with the highest number of deaths in Massachusetts, Maine, and New York. Preliminary findings in several of the whales have

shown evidence of human interactions or infectious diseases. However, we note that the population abundance is greater than 21,000, and the take by harassment authorized through this action is not expected to exacerbate the UME.

We anticipate the impacts of this harassment to follow those described in the general *Mysticetes* section above. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of minke whales. Level B harassment would be temporary, with primary impacts being temporary displacement of the Project Area but not abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 341 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 21 and 304, respectively), and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Canadian Eastern Coastal stock of minke whales.

Sei Whale

Sei whales are listed as endangered under the ESA, and the Nova Scotia stock is considered both depleted and strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area, and no UME has been designated for this species or stock. No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to 31 takes by harassment only over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, is 5 and 18, respectively (combined, this annual take (n=23) equates to approximately 0.37 percent of the stock abundance, if each take were considered to be of a different individual). As described in the Description of Marine Mammals in the Specific Geographic Region section of this preamble, most of the sei whale distribution is concentrated in Canadian waters and seasonally in northerly U.S. waters, although they are uncommonly observed in the waters off of Rhode

Island. Because sei whales are migratory and their known feeding areas are east and north of the Project Area (e.g., there is a feeding BIA in the Gulf of Maine), they would be more likely to be moving through and, considering this and the very low number of total takes, it is unlikely that any individual would be exposed more than once within a given year.

With respect to the severity of those individual takes by Level B harassment, we anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the WTG installation to be the most likely type of response. Any potential PTS and TTS would likely be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of sei whales. Moreover, any TTS would be of a small degree. Any avoidance of the Project Area due to the Project's activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above (including no more than 31 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 5 and 18, respectively), and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Nova Scotia stock of sei whales.

Odontocetes

In this section, we include information here that applies to all of the odontocete species and stocks addressed below. Odontocetes include dolphins, porpoises, and all other whales possessing teeth and we further divide them into the following subsections: sperm whales, small whales and dolphins, and harbor porpoise. These sub-sections include more specific information, as well as conclusions for each stock represented.

The authorized takes of odontocetes are incidental to all specified activities. No serious injury or mortality is anticipated or authorized. We anticipate that, given ranges of individuals (i.e., that some individuals remain within a small area for some period of time) and non-migratory nature of some odontocetes in general (especially as

compared to mysticetes), these takes are more likely to represent multiple exposures of a smaller number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual. Foundation installation is likely to disturb odontocetes to the greatest extent compared to UXO/MEC detonations and HRG surveys. While we expect animals to avoid the area during foundation installation and UXO/MEC detonations, their habitat range is extensive compared to the area ensonified during these activities. In addition, as described above, UXO/MEC detonations are instantaneous; therefore, any disturbance would be very limited in time.

As described earlier, Level B harassment may include direct disruptions in behavioral patterns (e.g., avoidance, changes in vocalizations (from masking) or foraging), as well as those associated with stress responses or TTS. Odontocetes are highly mobile species, and similar to mysticetes, NMFS expects any avoidance behavior to be limited to the area near the sound source. While masking could occur during foundation installation, it would only occur in the vicinity of and during the duration of the activity, and would not generally occur in a frequency range that overlaps most odontocete communication or any echolocation signals. The mitigation measures (e.g., use of sound attenuation systems, implementation of clearance and shutdown zones) would also minimize received levels such that the severity of any behavioral response would be expected to be less than exposure to unmitigated noise exposure.

Any masking or TTS effects are anticipated to be of low-severity. First, the frequency range of pile driving, the most impactful planned activity in terms of response severity, falls within a portion of the frequency range of most odontocete vocalizations. However, odontocete vocalizations span a much wider range than the low frequency construction activities planned for the project. As described above, recent studies suggest odontocetes have a mechanism to self-mitigate (i.e., reduce hearing sensitivity) the impacts of noise exposure, which could potentially reduce TTS impacts. Any masking or TTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete's range and as discussed earlier, the effects would only be expected to be of a short duration and for TTS, a relatively small degree.

Furthermore, odontocete echolocation occurs predominantly at frequencies

significantly higher than low frequency construction activities. Therefore, there is little likelihood that threshold shift would interfere with feeding behaviors. For HRG surveys, the sources operate at higher frequencies than foundation installation activities and UXO/MEC detonations. However, sounds from these sources attenuate very quickly in the water column, as described above. Therefore, any potential for PTS and TTS and masking is very limited. Further, odontocetes (e.g., common dolphins, spotted dolphins, bottlenose dolphins) have demonstrated an affinity to bow-ride actively surveying HRG surveys. Therefore, the severity of any harassment, if it does occur, is anticipated to be minimal based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of Rhode Island are used by several odontocete species. However, none except the sperm whale are listed under the ESA and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S. and the waters off of New England, including the Project Area, do not contain any particularly unique odontocete habitat features.

Sperm Whales

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered both depleted and strategic under the MMPA. The North Atlantic stock spans the East Coast out into oceanic waters well beyond the U.S. EEZ. Although listed as endangered, the primary threat faced by the sperm whale across its range (i.e., commercial whaling) has been eliminated. Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (e.g., no UMEs). There are no known areas of biological importance (e.g., critical habitat or BIAs) in or near the Project Area. No mortality or serious injury is anticipated or authorized for this species.

The rule authorizes up to 15 takes by Level B harassment over the 5-year period. The maximum annual allowable take by Level B harassment is 7, which equates to approximately 0.16 percent of the stock abundance, if each take were considered to be of a different

individual, with lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given sperm whale's preference for deeper waters, especially for feeding, it is unlikely that individuals will remain in the Project Area for multiple days, and therefore, the estimated takes likely represent exposures of different individuals on 1 day each annually.

If sperm whales are present in the Project Area during any Project activities, they will likely be only transient visitors and not engaging in any significant behaviors. Further, the potential for TTS is low for reasons described in the general Odontocete section, but if it does occur, any hearing shift would be small and of a short duration. Because whales are not expected to be foraging in the Project Area, any TTS is not expected to interfere with foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 15 takes by Level B harassment over the course of the 5-year rule, a maximum annual allowable take of 7, and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and authorized will have a negligible impact on the North Atlantic stock of sperm whales.

Dolphins and Small Whales (Including Delphinids)

The six species and stocks included in this group (which are indicated in Table 2 in the *Delphinidae* family) are not listed under the ESA. There are no known areas of specific biological importance in or around the Project Area for any of these species, and no UMEs have been designated for any of these species. No serious injury or mortality is anticipated or authorized for these species.

The six delphinid species with takes authorized for the Project are the Atlantic spotted dolphin, Atlantic white-sided dolphin, common bottlenose dolphin, common dolphin, long-finned pilot whale, and Risso's dolphin. The rule would allow for the authorization of up to between 58 and 12,460 takes (depending on species) by Level A harassment and/or Level B harassment over the 5-year period. The maximum annual allowable take for these species by Level A harassment and Level B harassment ranges from 0

to 35 and 34 to 8,086, respectively (this annual take equates to approximately 0.09 to 4.7 percent of the stock abundance, depending on each species, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring).

For all stocks listed above, given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually.

The number of takes, likely movement patterns of the affected species, and the intensity of any Level A harassment or Level B harassment, combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals. While delphinids may be taken on several occasions, none of these species are known to have small home ranges within the Project Area or known to be particularly sensitive to anthropogenic noise. The potential for PTS in dolphins and small whales is very low and, if PTS does occur, would occur to a limited number of individuals, be of small degree, and would be limited to the frequency ranges of the activities (which do not span across most of their hearing range). Some TTS can also occur but, again, it would be limited to the frequency ranges of the activities and any loss of hearing sensitivity is anticipated to return to pre-exposure conditions shortly after the animals move away from the source or the source ceases.

Given the magnitude and severity of the impacts discussed above and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on all of the species and stocks addressed in this section.

Harbor Porpoises

Harbor porpoises are not listed as threatened or endangered under the ESA, and the Gulf of Maine/Bay of Fundy stock is neither considered depleted or strategic under the MMPA. The stock is found predominantly in northern U.S. coastal waters (less than 150 m depth) and up into Canada's Bay

of Fundy (between New Brunswick and Nova Scotia). Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury are anticipated or authorized for this stock.

The rule authorizes up to 1,375 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 138 and 1,237, respectively (combined, this annual take (n=1,263) equates to approximately 1.32 percent of the stock abundance, if each take were considered to be of a different individual), with lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually.

Regarding the severity of takes by Level A harassment and Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair number of the responses could be of a moderate nature, particularly to pile driving, UXO/MEC detonations, and pneumatic hammering. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. However, foundation installation is scheduled to occur off the coast of Rhode Island and given alternative foraging areas, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals. Regarding UXO/MEC detonations and pneumatic hammering, any TTS or behavioral response would be brief and of low severity given only 1 UXO/MEC would be detonated on any given day and only up to 13 UXO/MECs could be detonated under these regulations and the brevity of pneumatic hammering required for installation and removal of both casing pipes (3 hours per day over 2 days per casing pipe for a total of 12 hours over 8 days).

With respect to PTS and TTS, the effects on an individual are likely relatively low, given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically,

TTS is unlikely to impact hearing ability in their more sensitive hearing ranges or the frequencies in which they communicate and echolocate. We expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive and any PTS would be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

As discussed in Hayes *et al.* (2022), harbor porpoises are seasonally distributed. During fall (October through November) and spring (April through June), harbor porpoises are widely dispersed from New Jersey to Maine with lower densities farther north and south. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina and lower densities are found in waters off New York to New Brunswick, Canada. In non-summer months they have been seen from the coastline to deep waters (>1,800 m; Westgate *et al.*, 1998), although the majority are found over the continental shelf. While harbor porpoises are likely to avoid the area during any of the project's construction activities, as demonstrated during European wind farm construction, the time of year in which most work would occur is when harbor porpoises are not in highest abundance, and any work that does occur would not result in the species' abandonment of the waters off of Rhode Island.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Phocids (Harbor Seals and Gray Seals)

The harbor seal and gray seal are not listed under the ESA, and neither the western North Atlantic stock of gray seal nor the western North Atlantic stock of harbor seal are considered depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described in the Description of Marine Mammals in the Specific Geographic Region section of this preamble, a UME has been designated for harbor seals and gray seals and is

described further below. No serious injury or mortality is anticipated or authorized for this species.

For the 2 seal species, the rule authorizes up to between 1,113 (harbor seals) and 2,781 (gray seals) takes, by harassment only, over the 5-year period. The maximum annual allowable take for each species by Level A harassment and Level B harassment, would range from 14 to 923 (harbor seals), and 22 to 2,303, respectively (combined, this annual take (n=937 to 2,325) equates to approximately 1.53 to 8.5 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). Though gray seals and harbor seals are considered migratory and no specific feeding areas have been designated in the area, the higher number of takes relative to the stock abundance suggests that while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times annually.

Harbor and gray seals occur in southern New England waters most often from December through April. Seals are more likely to be close to shore (*e.g.*, closer to the edge of the area ensonified above NMFS' harassment threshold), such that exposure to foundation installation would be expected to be at comparatively lower levels. Known haulouts for seals occur along the shores of Massachusetts and throughout Narragansett Bay, near the landfill construction location. However, neither Revolution Wind nor NMFS expect in-air sounds produced to cause take of hauled out pinnipeds at distances greater than several hundred meters. NMFS does not expect any harassment to occur and has not authorized any take from in-air impacts on hauled out seals.

As described in the Potential Effects to Marine Mammals and Their Habitat section in the proposed rule, construction of wind farms in Europe resulted in pinnipeds temporarily avoiding construction areas but returning within short time frames after construction was complete (Carroll *et al.*, 2010; Hamre *et al.*, 2011; Hastie *et al.*, 2015; Russell *et al.*, 2016; Brasseur *et al.*, 2010). Effects on pinnipeds that are taken by Level B harassment in the Project Area would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals

would simply move away from the sound source and be temporarily displaced from those areas (Lucke *et al.*, 2006; Edren *et al.*, 2010; Skeate *et al.*, 2012; Russell *et al.*, 2016). Given the low anticipated magnitude of impacts from any given exposure (*e.g.*, temporary avoidance), even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in § 217.275.

As described above, noise from pile driving is mainly low frequency, and while any PTS and TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS and TTS would not occur at frequencies around 5 kHz where pinniped hearing is most susceptible to noise-induced hearing loss (Kastelein *et al.*, 2018). In summary, any PTS and TTS would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS and TTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020. Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. Currently, the only active UME is occurring in Maine with some harbor and gray seals testing positive for highly pathogenic avian influenza (HPAI) H5N1. Although elevated strandings continue, neither UME (alone or in combination) provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 61,000 and annual mortality/serious injury (M/SI) (n=339) is well below PBR (1,729) (Hayes *et al.*, 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated overall abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic, as well as in Canada (Hayes *et al.*, 2020).

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Revolution Wind's activities are not expected to result in impacts on the

reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on harbor and gray seals.

Negligible Impact Determination

No mortality or serious injury is anticipated to occur or authorized. As described in the analysis above, the impacts resulting from the project's activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect any of the species or stocks through effects on annual 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 required mitigation and monitoring measures, NMFS finds that the authorized incidental take of marine mammals from all of Revolution Wind's specified activities combined will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals estimated to be taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS is authorizing incidental take by Level A harassment and/or Level B harassment of 16 species of marine mammals (with 16 managed stocks). The maximum number of instances of takes by combined Level A harassment and Level B harassment possible within any 1 year relative to the best available population abundance is less than one-third for all species and stocks potentially impacted.

For nine stocks, less than 1 percent of the stock abundance is authorized for take by harassment; for four stocks, less than or equal to 5 percent of the stock

abundance is authorized for take by harassment; for two stocks, less than 9 percent of the stock abundance has been authorized for take by harassment; and for one stock, less than 13 percent of the stock abundance has been authorized for take by harassment. Specific to the North Atlantic right whale, the maximum annual amount of take, which is by Level B harassment only, is 44, or 13 percent of the stock abundance, assuming that each instance of take represents a different individual. Please see Table 28 for information relating to this small numbers analysis.

Based on the analysis contained herein of the activities, including the required mitigation and monitoring measures, and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the promulgation of rulemakings, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NOAA GARFO.

The NMFS Office of Protected Resources has authorized the take of five marine mammal species, which are listed under the ESA: the North Atlantic right, sei, fin, blue, and sperm whale. The Permit and Conservation Division requested initiation of section 7 consultation on November 1, 2022 with GARFO for the promulgation of this rulemaking. NMFS issued a Biological Opinion on July 21, 2023 concluding that the promulgation of the rule and issuance of the LOA thereunder is not likely to jeopardize the continued

existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat. The Biological Opinion is available at <https://repository.library.noaa.gov/view/noaa/51759>.

Revolution Wind is required to abide by the promulgated regulations, as well as the reasonable and prudent measure and terms and conditions of the Biological Opinion and Incidental Take Statement, as issued by NMFS.

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must evaluate our proposed action (*i.e.*, promulgation of regulations) and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the BOEM 2023 Final Environmental Impact Statement (FEIS), which was finalized on July 17, 2023, and is available at: <https://www.boem.gov/renewable-energy/state-activities/revolution-wind-final-eis>.

After carefully considering alternatives described and analyzed in the Revolution Wind FEIS and comments from the public on the Draft EIS, BOEM identified a preferred alternative (Alternative G) for consideration, which reduces the number of WTG foundations Revolution Wind can install from 79 to 65 but still includes installation of 2 OSSs (for a total of 67 foundations). NMFS is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action (construction of the Revolution Wind offshore wind energy facility, as proposed by Revolution Wind) and alternatives (variations of the Proposed Action that consider other specific concerns, *e.g.*, reducing impacts to the benthic habitat) involves activities that could affect marine resources, and due to NMFS' jurisdiction by law and special expertise. Issuance of an LOA under the MMPA triggers independent NEPA compliance obligations, which may be satisfied by adopting the FEIS prepared by BOEM. As a cooperating agency, NMFS provided extensive comments on the Draft Environmental Impact Statement. Based on BOEM's satisfactory revisions to the DEIS, NMFS made the decision to adopt the FEIS. On August 21, 2023, NMFS signed a joint Record of Decision (ROD), which satisfied NMFS' obligation under NEPA. The full text of the mitigation,

monitoring, and reporting requirements for Alternative G are available in Appendix A of the ROD, which is available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/revolution-wind>.

In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2023 Revolution Wind FEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the promulgation of this rule and issuance of the associated LOA. NMFS, therefore, has adopted the 2023 Revolution Wind FEIS through a joint ROD with BOEM. The joint ROD for adoption of the 2023 Revolution Wind FEIS and promulgation of this final rule and subsequent issuance of a LOA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Executive Order 12866

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOA, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS.

Coastal Zone Management Act (CZMA)

The Coastal Zone Management Act requires that any applicant for a required Federal license or permit to conduct an activity, within the coastal zone or within the geographic location descriptions (*i.e.*, areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects), affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally-approved coastal management program. NMFS determined that Revolution Wind's application for an incidental take regulations is an unlisted activity and, thus, is not subject to Federal consistency requirements in the absence of the receipt and prior approval of an unlisted activity review request from the state by the Director of NOAA's Office for Coastal Management. Pursuant to 15 CFR 930.54, NMFS published notice of receipt of Revolution Wind's application in the **Federal Register** on March 21, 2022 (87 FR 15942) and published notice of the proposed rule on December 23, 2022 (87 FR 79072). The state of Rhode Island did not request approval from the Director of NOAA's Office for Coastal Management to review Revolution Wind's application as an unlisted activity, and the time period for making such request has expired. Therefore, NMFS has determined the incidental take authorization is not subject to Federal consistency review.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Wildlife.

Dated: September 29, 2023.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 to read as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart BB, consisting of §§ 217.270 through 217.279, to read as follows:

Subpart BB—Taking Marine Mammals Incidental to Construction of the Revolution Wind Project Offshore of Rhode Island

Sec.

217.270 Specified activity and specified geographical region.

217.271 Effective dates.

217.272 Permissible methods of taking.

217.273 Prohibitions.

217.274 Mitigation requirements.

217.275 Monitoring and reporting requirements.

217.276 Letter of Authorization.

217.277 Modifications of Letter of Authorization.

217.278–217.279 [Reserved]

Subpart BB—Taking Marine Mammals Incidental to Construction of the Revolution Wind Project Offshore of Rhode Island

§ 217.270 Specified activity and specified geographical region.

(a) Regulations in this subpart apply to activities associated with the Revolution Wind project (hereafter referred to as the “Project”) by Revolution Wind, LLC (hereafter referred to as “Letter of Authorization (LOA) Holder”) and those persons it authorizes or funds to conduct activities on its behalf in the specified geographical region outlined in paragraph (b) of this section. Requirements imposed on LOA Holder must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified geographical region is the Mid-Atlantic Bight, which includes, but is not limited to, the Bureau of Ocean Energy Management (BOEM) Lease Area Outer Continental Shelf (OCS)—A 0486 Commercial Lease of Submerged Lands for Renewable Energy Development, two export cable routes, and two sea-to-shore transition points located at Quonset Point in North Kingstown, Rhode Island.

(c) The specified activities are impact pile driving of wind turbine generator (WTGs) and offshore substation (OSSs) foundations; vibratory pile driving (install and subsequently remove) of cofferdams and goal posts; pneumatic hammering (install and subsequently remove) of casing pipes; high-resolution geophysical (HRG) site characterization surveys; detonation of unexploded ordnances or munitions and explosives of concern (UXOs/MECs); vessel transit within the specified geographical region to transport crew, supplies, and materials; WTG operation; fishery and ecological monitoring surveys; placement of scour protection; and trenching, laying, and burial activities associated with the installation of the export cable routes from OSSs to shore-

based converter stations and inter-array cables between turbines.

§ 217.271 Effective dates.

The regulations in this subpart are effective from November 20, 2023, through November 19, 2028.

§ 217.272 Permissible methods of taking.

Under the LOA, issued pursuant to §§ 217.276, and 217.277, and § 216.106 of this chapter, the LOA Holder, and those persons it authorizes or funds to conduct activities on its behalf, may incidentally, but not intentionally, take marine mammals within the vicinity of BOEM Lease Area OCS-A 0486

Commercial Lease of Submerged Lands for Renewable Energy Development, along export cable routes, and at the two sea-to-shore transition points located at Quonset Point in North Kingstown, Rhode Island in the following ways, provided LOA Holder is in complete compliance with all terms, conditions, and requirements of the regulations in this subpart and an LOA issue under §§ 217.276 and 217.277:

(a) By Level B harassment associated with the acoustic disturbance of marine mammals by impact pile driving (WTG and OSS foundation installation), vibratory pile driving (cofferdam and goal post installation and removal),

pneumatic hammering (casing pipe installation and removal), UXO/MEC detonations, and HRG site characterization surveys;

(b) By Level A harassment associated with the acoustic disturbance of marine mammals by impact pile driving of WTG and OSS foundations, pneumatic hammering of casing pipes, and UXO/MEC detonations;

(c) Take by mortality or serious injury of any marine mammal species is not authorized; and

(d) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the following stocks:

TABLE 1 TO PARAGRAPH (d)

Marine mammal species	Scientific name	Stock
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western Atlantic.
Blue whale	<i>Balaenoptera musculus</i>	Western North Atlantic.
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic.
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine.
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal.
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia.
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic.
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic.
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic.
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Offshore.
Common dolphin	<i>Delphinus delphis</i>	Northern Migratory Coastal.
Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic.
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic.
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy.
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic.
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic.

§ 217.273 Prohibitions.

Except for the takings described in § 217.272 and authorized by an LOA issued under §§ 217.276 or 217.277, it is unlawful for any person to do any of the following in connection with the activities described in this subpart:

(a) Violate or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under §§ 217.276 and 217.277;

(b) Take any marine mammal stock not specified in § 217.272(d);

(c) Take any marine mammal stock specified in the LOA in any manner other than as specified in the LOA; or

(d) Take any marine mammal stock specified in § 217.272(d) after National Marine Fisheries Service (NMFS) Office of Protected Resources determines such taking results in more than a negligible impact on the stock of marine mammals.

§ 217.274 Mitigation requirements.

When conducting the activities identified in § 217.270(c) within the specified geographical area described in § 217.270(b), LOA Holder must implement the mitigation measures

contained in this section and any LOA issued under §§ 217.276 and 217.277. These mitigation measures include, but are not limited to:

(a) *General conditions.* LOA Holder must comply with the following general measures:

(1) A copy of any issued LOA must be in the possession of LOA Holder and its designees, all vessel operators, visual protected species observers (PSOs), passive acoustic monitoring (PAM) operators, pile driver operators, and any other relevant designees operating under the authority of the issued LOA;

(2) LOA Holder must conduct training for construction, survey, and vessel personnel and the marine mammal monitoring team (PSO and PAM operators) prior to the start of all in-water construction activities in order to explain responsibilities, communication procedures, marine mammal detection and identification, mitigation, monitoring, and reporting requirements, safety and operational procedures, and authorities of the marine mammal monitoring team(s). This training must be repeated for new personnel who join

the work during the project. A description of the training program must be provided to NMFS at least 60 days prior to the initial training before in-water activities begin. Confirmation of all required training must be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating project activities;

(3) Prior to and when conducting any in-water activities and vessel operations, LOA Holder personnel and contractors (e.g., vessel operators, PSOs) must use available sources of information on North Atlantic right whale presence in or near the Project Area including daily monitoring of the Right Whale Sightings Advisory System, and monitoring of Coast Guard VHF Channel 16 throughout the day to receive notification of any sightings and/or information associated with any Slow Zones (i.e., Dynamic Management Areas (DMAs) and/or acoustically-triggered Slow Zones) to provide situational awareness for both vessel operators, PSO(s), and PAM operator(s); The marine mammal monitoring team

must monitor these systems no less than every 4 hours. For any UXO/MEC detonation, these systems must be monitored for 24 hours and immediately prior to blasting;

(4) Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains;

(5) For North Atlantic right whales, any visual or acoustic detection must trigger a delay to the commencement of impact pile driving, UXO/MEC detonation, and HRG surveys;

(6) In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale, it must be treated as if it were a North Atlantic right whale for purposes of mitigation;

(7) If a delay to commencing an activity is called for by the Lead PSO or PAM operator, LOA Holder must take the required mitigative action. If a shutdown of an activity is called for by the Lead PSO or PAM operator, LOA Holder must take the required mitigative action unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. Any disagreements between the Lead PSO, PAM operator, and the activity operator regarding delays or shutdowns would only be discussed after the mitigative action has occurred;

(8) If an individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has been met, is observed entering or within the relevant Level B harassment zone prior to beginning a specified activity, the activity must be delayed. If the activity is ongoing, it must be shut down immediately unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. The activity must not commence or resume until the animal(s) has been confirmed to have left and is on a path away from the Level B harassment zone or after 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for sperm and baleen whales (including North Atlantic right whales) with no further sightings;

(9) For in-water construction heavy machinery activities listed in § 217.270(c), if a marine mammal is on a path towards or comes within 10 meters (m) (32.8 feet (ft)) of equipment, LOA Holder must cease operations until the marine mammal has moved more

than 10 m on a path away from the activity to avoid direct interaction with equipment;

(10) All vessels must be equipped with a properly installed, operational Automatic Identification System (AIS) device and LOA Holder must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources;

(11) By accepting the issued LOA, LOA Holder consents to on-site observation and inspections by Federal agency personnel (including NOAA personnel) during activities described in this subpart, for the purposes of evaluating the implementation and effectiveness of measures contained within the LOA and this subpart; and

(12) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with a PSO, PAM Operator, or vessel crew member acting as an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities or that creates an intimidating, hostile, or offensive environment. Personnel may report any violations to the NMFS Office of Law Enforcement.

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures, unless an emergency situation presents a threat to the health, safety, or life of a person or when a vessel, actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response, requires speeds in excess of 10 kn (11.5 miles per hour (mph)) to fulfill those responsibilities, while in the specified geographical region:

(1) Prior to the start of the Project's activities involving vessels, LOA Holder must receive a protected species training that covers, at a minimum, identification of marine mammals that have the potential to occur where vessels would be operating; detection observation methods in both good weather conditions (*i.e.*, clear visibility, low winds, low sea states) and bad weather conditions (*i.e.*, fog, high winds, high sea states, with glare); sighting communication protocols; all vessel speed and approach limit mitigation requirements (*e.g.*, vessel strike avoidance measures); and information and resources available to the project personnel regarding the applicability of Federal laws and regulations for protected species. This training must be repeated for any new vessel personnel who join the Project.

The dedicated visual observers must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this subpart.

Confirmation of the observers' training and understanding of the Incidental Take Authorization (ITA) requirements must be documented on a training course log sheet and reported to NMFS;

(2) LOA Holder's vessels, regardless of their vessel's size, must maintain a vigilant watch for all marine mammals during all vessel operations and slow down, stop their vessel, or alter course to avoid striking any marine mammal;

(3) LOA Holder's underway vessels (*e.g.*, transiting, surveying) operating at any speed must have a dedicated visual observer on duty on each vessel at all times to monitor for marine mammals primarily within a 180° direction of the forward path of the vessel (90° port to 90° starboard) located at an appropriate vantage point for ensuring vessels are maintaining appropriate separation distances. Visual observers must be equipped with alternative monitoring technology (*e.g.*, night vision devices, infrared cameras) for periods of low visibility (*e.g.*, darkness, rain, fog, *etc.*). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, use of visual monitoring and alternative monitoring equipment, and reporting requirements in this subpart. Visual observers may be third-party observers (*i.e.*, NMFS-approved PSOs as defined in § 217.275 (a)(1)) or trained crew members;

(4) LOA Holder must continuously monitor the U.S. Coast Guard VHF Channel 16 at the onset of transiting through the duration of transiting, over which notifications of North Atlantic right whale Slow Zones (DMAs and acoustically-triggered Slow Zones) are broadcasted. At the onset of transiting and at least once every 4 hours, vessel operators and/or trained crew member(s) must also monitor the LOA Holder's Project-Wide Situational Awareness System, WhaleAlert, and relevant NOAA information systems such as the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales;

(5) All LOA Holder's vessels must transit at 10 kn (11.5 mph) or less within any active North Atlantic right whale Seasonal Management Area (SMA) and Slow Zone (*i.e.*, Dynamic Management Areas (DMA) or acoustically-triggered Slow Zones);

(6) Between November 1 and April 30, all vessels, regardless of size, must operate port to port (specifically from ports in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Virginia, and Maryland), and within the Lease Area and Revolution Wind Export Cable (RWECC) corridor at 10 kn (11.5 mph) or less, except for vessels transiting in Narragansett Bay or Long Island Sound;

(7) All LOA Holder's vessel(s) (including crew transfer vessels) are restricted from traveling over 10 kn (11.5 mph), unless traveling in a frequently traveled transit corridor (e.g., crew transfer corridor) between port to the Lease Area while LOA Holder monitors the transit corridor to detect large whales (including North Atlantic right whales) in real-time with PAM prior to and during transits. This measure only applies when no other vessel speed restrictions are in place;

(8) All LOA Holder's vessels, regardless of size, must immediately reduce speed to 10 kn (11.5 mph) or less for at least 24 hours when a North Atlantic right whale is sighted at any distance by any project-related personnel or acoustically detected by any project-related PAM system. Each subsequent observation or acoustic detection in the Project area must trigger an additional 24-hour period of operating at 10 kn or less. If a North Atlantic right whale is reported via any of the monitoring systems (see (b)(4) of this section) within 10 kilometers (km; 6.2 miles (mi)) of a transiting vessel(s), that vessel must operate at 10 kn (11.5 mph) or less for 24 hours following the reported detection;

(8) LOA Holder's vessels, regardless of size, must immediately reduce speed to 10 kn (11.5 mph) or less when any large whale (other than a North Atlantic right whale) is observed within 500 m (1,640 ft) of an underway vessel;

(9) If a large whale (other than a North Atlantic right whale) is detected via the transit corridor PAM system, all vessels must travel at 10 kn (11.5 mph) until the whale can be confirmed visually beyond 500 m of the vessel or 24 hours has passed.

(10) LOA Holder's vessels must maintain a minimum separation distance of 500 m (1,640 ft) from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kn (11.5 mph) or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m of an underway vessel, that vessel must reduce speed and shift the engine to neutral. Engines must not be

engaged until the whale has moved outside of the vessel's path and beyond 500 m. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take the vessel strike avoidance measures described in this paragraph;

(11) LOA Holder's vessels must maintain a minimum separation distance of 100 m (328 ft) from sperm whales and non-North Atlantic right whale baleen whales. If one of these species is sighted within 100 m of a transiting vessel, LOA Holder's vessel must reduce speed and shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 100 m (328 ft);

(12) LOA Holder's vessels must maintain a minimum separation distance of 50 m (164 ft) from all delphinid cetaceans and pinnipeds with an exception made for those that approach the vessel (i.e., bow-riding dolphins). If a delphinid cetacean that is not bow riding or a pinniped is sighted within 50 m of a transiting vessel, LOA Holder's vessel operator must shift the engine to neutral, with an exception made for those that approach the vessel (e.g., bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m;

(13) When a marine mammal(s) is sighted while LOA Holder's vessel(s) is transiting, the vessel must not divert or alter course to approach any marine mammal and must take action as necessary to avoid violating the relevant separation distances (e.g., attempt to remain parallel to the animal's course, slow down, and avoid excessive speed or abrupt changes in direction until the animal has left the area). If a separation distance is triggered, any vessel underway must avoid abrupt changes in course direction and take appropriate action as specified in paragraphs (b)(10), (b)(11), and (b)(12) of this section. This measure does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (i.e., any situation where the vessel is navigationally constrained);

(14) LOA Holder is required to abide by other speed and approach regulations. Nothing in this subpart exempts vessels from any other applicable marine mammal speed and approach regulations;

(15) LOA Holder must check, daily, for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas

(i.e., DMAs, SMAs, Slow Zones) and any information regarding North Atlantic right whale sighting locations;

(16) LOA Holder must submit a North Atlantic Right Whale Vessel Strike Avoidance Plan to NMFS Office of Protected Resources for review and approval at least 90 days prior to the planned start of vessel activity. The plan must provide details on the vessel-based observer and PAM protocols for transiting vessels. If a plan is not submitted or approved by NMFS prior to vessel operations, all project vessels transiting, year round, must travel at speeds of 10 kn (11.5 mph) or less. LOA Holder must comply with any approved North Atlantic Right Whale Vessel Strike Avoidance Plan; and

(17) Speed over ground will be used to measure all vessel speed restrictions.

(c) *WTG and OSS foundation installation.* The following requirements apply to impact pile driving activities associated with the installation of WTG and OSS foundations:

(1) Impact pile driving must not occur January 1 through April 30. Impact pile driving must be avoided to the maximum extent practicable in December; however, it may occur if necessary to complete the project with prior approval by NMFS;

(2) Monopiles must be no larger than 15 m (49 ft) in diameter, representing the larger end of the monopile design. During all monopile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,000 kilojoules for monopile installation. No more than three monopiles may be installed per day;

(3) LOA Holder(s) must not initiate pile driving earlier than 1 hour after civil sunrise or later than 1.5 hours prior to civil sunset, unless LOA Holder submits and NMFS approves an Alternative Monitoring Plan as part of the Pile Driving and Marine Mammal Monitoring Plan that reliably demonstrates the efficacy of their nighttime monitoring equipment and protocols;

(4) LOA Holder must utilize a soft-start protocol for each impact pile driving event of all foundations by performing 4 to 6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes;

(5) Soft-start must occur at the beginning of impact driving and at any time following a cessation of impact pile driving of 30 minutes or longer;

(6) LOA Holder must establish clearance zones, which must be

measured using the radial distance around the pile being driven. If a marine mammal is detected within or about to enter the applicable clearance zones, prior to the beginning of soft-start procedures, impact pile driving must be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for sperm and baleen whales (including the North Atlantic right whale);

(7) For North Atlantic right whales, any visual observation at any distance or acoustic detection within the PAM monitoring zone must trigger a delay to the commencement of pile driving. Pile driving may begin only if no North Atlantic right whale visual detections at any distance or acoustic detections within the PAM monitoring zone have occurred during the 60-minute clearance zone monitoring period;

(8) LOA Holder must deploy at least two fully functional, uncompromised noise abatement systems that reduce noise levels to the modeled harassment isopleths, assuming 10-dB attenuation, during all impact pile driving:

(i) A single bubble curtain must not be used;

(ii) Any bubble curtain(s) must distribute air bubbles using an air flow rate of at least $0.5 \text{ m}^3/(\text{minute} \cdot \text{m})$. The bubble curtain(s) must surround 100 percent of the piling perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must adjust the air supply and operating pressure such that the maximum possible sound attenuation performance of the bubble curtain(s) is achieved;

(iii) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact;

(iv) No parts of the ring or other objects may prevent full seafloor contact with a bubble curtain ring;

(v) Construction contractors must train personnel in the proper balancing of airflow to the bubble curtain ring. LOA Holder must provide NMFS Office of Protected Resources with a bubble curtain performance test and maintenance report to review within 72 hours after each pile using a bubble curtain is installed. Additionally, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed; and

(vi) Corrections to the bubble ring(s) to meet the performance standards, as described in (c)(8)(ii) through (v) of this paragraph, must occur prior to impact pile driving of monopiles. If LOA Holder uses a noise mitigation device in addition to the bubble curtain, LOA Holder must maintain similar quality control measures as described in paragraph (c)(9) of this section.

(9) LOA Holder must utilize NMFS-approved PAM systems, as described in paragraph (c)(16) of this section. The PAM system components (*i.e.*, acoustic buoys) must not be placed closer than 1 km to the pile being driven so that the activities do not mask the PAM system. LOA Holder must provide an adequate demonstration of and justification for the detection range of the system they plan to deploy while considering potential masking from concurrent pile-driving and vessel noise. The PAM system must be able to detect a vocalization of North Atlantic right whales up to 10 km.

(10) LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.275(c). At least 3 on-duty PSOs must be deployed on the pile driving platform. Additionally, two dedicated-PSO vessels must be used at least 60 minutes before, during, and 30 minutes after all pile driving, and each dedicated-PSO vessel must have at least three PSOs on duty during these time periods.

(11) LOA Holder must establish shutdown zones, which must be measured using the radial distance around the pile being driven. If a marine mammal is detected (visually or acoustically) entering or within the respective shutdown zone after pile driving has begun, the PSO or PAM operator must call for a shutdown of pile driving and LOA Holder must stop pile driving immediately, unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel that creates risk of injury or loss of life for individuals, or the lead engineer determines there is pile refusal or pile instability. If pile driving is not shutdown in one of these situations, LOA Holder must reduce hammer energy to the lowest level practicable and the reason(s) for not shutting down must be documented and reported to NMFS Office of Protected Resources within the applicable monitoring reports (*e.g.*, weekly, monthly);

(12) Any visual observation at any distance or acoustic detection within the PAM Monitoring Zone of a North Atlantic right whale triggers shutdown requirements under paragraph (c)(11) of this section. If pile driving has been

shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale has neither been visually or acoustically detected for 30 minutes;

(13) If pile driving has been shut down due to the presence of a marine mammal other than a North Atlantic right whale, pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for sperm and baleen whales (including North Atlantic right whales) whales. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability at which time LOA Holder must use the lowest hammer energy practicable to maintain stability;

(14) LOA Holder must conduct sound field verification (SFV) measurements during pile driving activities associated with the installation of, at minimum, the first three monopile foundations. SFV measurements must continue until at least three consecutive piles demonstrate noise levels are at or below those modeled, assuming 10-decibels (dB) of attenuation. Subsequent SFV measurements are also required should larger piles be installed or if additional piles are driven that may produce louder sound fields than those previously measured (*e.g.*, higher hammer energy, greater number of strikes). SFV measurements must be conducted as follows:

(i) Measurements must be made at a minimum of four distances from the pile(s) being driven, along a single transect, in the direction of lowest transmission loss (*i.e.*, projected lowest transmission loss coefficient), including, but not limited to, 750 m (2,460 ft) and three additional ranges selected such that measurement of Level A harassment and Level B harassment isopleths are accurate, feasible, and avoids extrapolation. At least one additional measurement at an azimuth 90 degrees from the array at 750 m must be made. At each location, there must be a near bottom and mid-water column hydrophone (measurement systems);

(ii) The recordings must be continuous throughout the duration of all pile driving of each foundation;

(iii) The SFV measurement systems must have a sensitivity appropriate for the expected sound levels from pile driving received at the nominal ranges

throughout the installation of the pile. The frequency range of SFV measurement systems must cover the range of at least 20 hertz (Hz) to 20 kilohertz (kHz). The SFV measurement systems must be designed to have omnidirectional sensitivity so that the broadband received level of all pile driving exceeds the system noise floor by at least 10 dB. The dynamic range of the SFV measurement system must be sufficient such that at each location, and the signals avoid poor signal-to-noise ratios for low amplitude signals and avoid clipping, nonlinearity, and saturation for high amplitude signals;

(iv) All hydrophones used in SFV measurements systems are required to have undergone a full system, traceable laboratory calibration conforming to International Electrotechnical Commission (IEC) 60565, or an equivalent standard procedure, from a factory or accredited source to ensure the hydrophone receives accurate sound levels, at a date not to exceed 2 years before deployment. Additional *in-situ* calibration checks using a pistonphone are required to be performed before and after each hydrophone deployment. If the measurement system employs filters via hardware or software (*e.g.*, high-pass, low-pass, *etc.*), which is not already accounted for by the calibration, the filter performance (*i.e.*, the filter's frequency response) must be known, reported, and the data corrected before analysis;

(v) LOA Holder must be prepared with additional equipment (*e.g.*, hydrophones, recording devices, hydrophone calibrators, cables, batteries), which exceeds the amount of equipment necessary to perform the measurements, such that technical issues can be mitigated before measurement;

(vi) LOA Holder must submit 48-hour interim reports after each foundation is measured (see § 217.275(g) section for interim and final reporting requirements);

(vii) LOA Holder must not exceed modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds, assuming 10-dB attenuation, for foundation installation. If any of the interim SFV measurement reports submitted for the first three monopile foundations indicate the modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds assuming 10-dB attenuation are being exceeded, LOA Holder must implement additional sound attenuation measures such that measured distances to thresholds for future piles do not exceed modeled distances to thresholds assuming 10-dB

attenuation. LOA Holder must also increase clearance and shutdown zone sizes to those identified by NMFS until SFV measurements on at least three additional foundations all demonstrate acoustic distances to harassment threshold isopleths meet or are less than those modeled assuming 10-dB of attenuation. LOA Holder must operate fully functional sound attenuation systems (*e.g.*, ensure hose maintenance, pressure testing) to meet noise levels modeled, assuming 10-dB attenuation;

(viii) If, after additional measurements conducted pursuant to requirements of paragraph (c)(14)(vii) of this section, acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), LOA Holder may request to NMFS Office of Protected Resources a modification of the clearance and shutdown zones. For NMFS Office of Protected Resources to consider a modification request for reduced zone sizes, LOA Holder must have conducted SFV measurements on an additional three foundations and ensure that subsequent foundations would be installed under conditions that are predicted to produce equal to or smaller harassment zones than those modeled assuming 10-dB of attenuation;

(ix) LOA Holder must conduct SFV measurements upon commencement of turbine operations to estimate turbine operational source levels, in accordance with a NMFS-approved Foundation Installation Pile Driving SFV Plan. SFV must be conducted in the same manner as previously described in (c)(14)(i) through (v) of this section, with appropriate adjustments to measurement distances, number of hydrophones, and hydrophone sensitivities being made, as necessary; and

(x) LOA Holder must submit a SFV Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of foundation installation activities and abide by the Plan if approved. At minimum, the SFV Plan must describe how LOA Holder would ensure that the first three monopile foundation installation sites selected for SFV measurements are representative of the rest of the monopile installation sites such that future pile installation events are anticipated to produce similar sound levels to those piles measured. In the case that these sites/scenarios are not determined to be representative of all other pile installation sites, LOA Holder must include information in the SFV Plan on how additional sites/scenarios

would be selected for SFV measurements. The SFV Plan must also include methodology for collecting, analyzing, and preparing SFV measurement data for submission to NMFS Office of Protected Resources and describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. SFV for pile driving may not occur until NMFS approves the SFV Plan for this activity.

(15) LOA Holder must submit a Foundation Installation Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of pile driving and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any pile driving. The Plan must include a description of all monitoring equipment and PAM and PSO protocols (including number and location of PSOs) for all pile driving. No foundation pile installation can occur without NMFS' approval of the Plan; and

(16) LOA Holder must submit a Passive Acoustic Monitoring Plan (PAM Plan) to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of foundation installation activities (impact pile driving) and abide by the Plan if approved. The PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind. The PAM Plan must describe all proposed PAM equipment, procedures, and protocols including proof that vocalizing North Atlantic right whales will be detected within the clearance and shutdown zones. No pile installation can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division.

(d) *Cofferdam and casing pipe/goal post installation and removal.* The following requirements apply to the installation and removal of cofferdams, casing pipes, and goal posts at the cable landfall construction sites:

(1) Installation and removal of cofferdams, casing pipes, and goal posts must not occur during nighttime hours;

(2) LOA Holder must establish and implement clearance zones for the installation and removal of cofferdams,

casing pipes, and goal posts using visual monitoring. These zones must be measured using the radial distance from the cofferdam, casing pipe, and goal post being installed and/or removed;

(3) LOA Holder must utilize PSO(s), as described in § 217.275(d). At least 2 on-duty PSOs must monitor for marine mammals at least 30 minutes before, during, and 30 minutes after vibratory pile driving associated with installation of cofferdam and goal posts and pneumatic hammering associated with casing pipe installation; and

(4) If a marine mammal is observed entering or within the respective shutdown zone after vibratory pile driving or pneumatic hammering has begun, the PSO must call for a shutdown of vibratory pile driving and pneumatic hammering. LOA Holder must stop vibratory pile driving and pneumatic hammering immediately unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual or if there is a risk of damage to the vessel that would create a risk of injury or loss of life for individuals or if the lead engineer determines there is refusal or instability. In any of these situations, LOA Holder must document the reason(s) for not shutting down and report the information to NMFS Office of Protected Resources in the next available weekly report (as described in § 217.275(g)).

(e) *UXO/MEC detonations.* The following requirements apply to all UXO/MEC detonations:

(1) Upon encountering an UXO/MEC, LOA Holder may only resort to high-order removal (*i.e.*, detonation) if all other means of removal are impracticable;

(2) LOA Holder may detonate a maximum of 13 UXO/MECs of varying sizes but no larger than 1,000 pounds (lbs; 454 kilograms (kg)) charge weight (*i.e.*, E12), over the effective period of this rulemaking;

(3) LOA Holder must not detonate UXO/MECs from December 1 through April 30, annually;

(4) UXO/MEC detonations must only occur during daylight hours;

(5) No more than one detonation may occur within a 24-hour period;

(6) LOA Holder must establish and implement clearance zones for UXO/MEC detonation using both visual and acoustic monitoring, as described in paragraphs (c)(6), (7), and (11) through (13) of this section. UXO/MEC clearance zones are specific to the known charge weight size of the UXO/MEC to be detonated; if charge weight is unknown or uncertain, then the largest zone size must be used;

(7) LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.275(c). At least 3 PSOs on the activity platform and on each of 2 dedicated PSO vessels must be used for all detonations with clearance zones less than 5 km. If the clearance zone is larger than 5 km, at least one dedicated PSO vessel (with at least three on-duty PSOs) and an aerial platform (with at least two on-duty PSOs) must be used. Clearance zone size is measured using the radial distance from the UXO/MEC to be detonated;

(8) LOA Holder must utilize NMFS-approved PAM systems, as described in the PAM Plan see § 217.274(c)(16));

(9) LOA Holder must deploy at least a double big bubble curtain during all UXO/MEC detonations. The double bubble curtain must be deployed at a distance that avoids damage to the hose nozzles:

(i) Any bubble curtain(s) must distribute air bubbles using an air flow rate of at least 0.5 m³/(minute*m). The bubble curtain(s) must surround 100 percent of the UXO/MEC detonation location throughout the full depth of the water column;

(ii) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact;

(iii) No parts of the ring or other objects may prevent full seafloor contact with a bubble curtain ring;

(iv) Construction contractors must train personnel in the proper balancing of airflow to the bubble curtain ring. LOA Holder must provide NMFS Office of Protected Resources with a bubble curtain performance test and maintenance report to review within 72 hours after each UXO/MEC is detonated. Additionally, a full maintenance check (*e.g.*, manually clearing holes) must occur prior to each UXO/MEC detonation; and

(v) Corrections to the bubble ring(s) to meet the performance standards in this paragraph (e)(9) of this section must occur prior to UXO/MEC detonation.

(10) LOA Holder must conduct SFV during all UXO/MEC detonations as described in (c)(14) of this section and deploy a pressure transducer;

(11) Clearance zones must be fully visible for at least 60 minutes and all marine mammal(s) must be confirmed to be outside of the clearance zone for at least 30 minutes prior to detonation. PAM must also be conducted for at least 60 minutes and the zone must be acoustically cleared during this time. If a marine mammal is observed entering or within the clearance zone prior to

detonation, the activity must be delayed. Detonation may only commence if all marine mammals have been confirmed to have voluntarily left the clearance zones and been visually confirmed to be beyond the clearance zone, or when 15 minutes have elapsed without any redetections of odontocetes (excluding sperm whales) and pinnipeds, or 30 minutes have elapsed without any redetections of sperm and baleen whales (including the North Atlantic right whale); or

(12) For UXO/MEC detonations, LOA Holder must follow all measures described in (c)(8)(ii) through (vi) and (c)(14)(i) through (x), of this section as applicable, as well as the measures below:

(i) LOA Holder must not exceed modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds, assuming 10-dB attenuation, for UXO/MEC detonations. If any of the interim SFV measurement reports submitted for any UXO/MEC detonations indicate the modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds assuming 10-dB attenuation for future detonations will be exceeded, then LOA Holder must implement additional sound attenuation measures on all subsequent UXO/MEC detonations, including but not limited to the deployment of additional noise abatement systems (NAS) to assist in achieving measurements in alignment with the modeled ranges. LOA Holder must also increase clearance zone sizes to those identified by NMFS until SFV measurements on UXO/MECs demonstrate distances to harassment thresholds will be met or will be less than those modeled assuming 10-dB of attenuation. LOA Holder must operate fully functional sound attenuation systems (*e.g.*, ensure hose maintenance, pressure testing) to meet noise levels modeled, assuming 10 dB attenuation, for UXO/MECs of the same charge weight or else no detonation activities may occur until NMFS and LOA Holder can evaluate the situation and ensure future UXO/MEC detonations do not exceed noise levels modeled, assuming 10-dB attenuation;

(ii) LOA Holder must submit a SFV Plan for UXO/MEC detonation to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of UXO/MEC detonation activities and abide by the Plan if approved. The SFV Plan must include methodology for collecting, analyzing, and preparing SFV measurement data for submission to NMFS Office of Protected Resources and describe how

the effectiveness of the sound attenuation methodology would be evaluated based on the results. SFV for UXO/MEC detonation cannot occur until NMFS approves the SFV Plan for this activity;

(iii) LOA Holder must submit a UXO/MEC Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of UXO/MEC detonation, respectively, and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any UXO/MEC detonations. The Plan must include a description of all monitoring equipment and PAM and PSO protocols (including number and location of PSOs) for all UXO/MEC detonations. The Plan must include final UXO/MEC detonation project design (e.g., number and type of UXO/MECs, removal method(s), charge weight(s), anticipated start date, etc.) and all information related to PAM and PSO monitoring protocols for UXO/MEC activities. The Plan must detail all plans and procedures for sound attenuation as well as for monitoring marine mammals during all UXO/MEC detonations. No UXO/MEC detonations can occur without NMFS' approval of the Plan; and

(iv) LOA Holder must submit a Passive Acoustic Monitoring Plan (PAM Plan) to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of UXO/MEC detonations and abide by the Plan if approved. The PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind. The Plan must describe all proposed PAM equipment, procedures, and protocols including proof that vocalizing North Atlantic right whales will be detected within the clearance and shutdown zones. No UXO/MEC detonations can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division.

(f) *HRG surveys*. The following requirements apply to HRG surveys operating sub-bottom profilers (SBPs) (i.e., boomers, sparkers, and Compressed High Intensity Radiated Pulse (CHIRPS)):

(1) LOA Holder must establish and implement clearance and shutdown zones for HRG surveys using visual monitoring, as described in § 217.275(e) conducted by PSOs, as described in § 217.275(b);

(2) LOA Holder must utilize PSO(s), as described in § 217.275(e);

(3) LOA Holder must abide by the relevant Project Design Criteria (PDCs 4, 5, and 7) of the programmatic consultation completed by NMFS' Greater Atlantic Regional Fisheries Office on June 29, 2021 (revised September 2021), pursuant to section 7 of the Endangered Species Act (ESA). To the extent that any relevant Best Management Practices (BMPs) described in these PDCs are more stringent than the requirements herein, those BMPs supersede these requirements;

(4) SBPs (hereinafter referred to as "acoustic sources") must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Acoustic sources must be used at the lowest source level to meet the survey objective, when in use, and must be turned off when they are not necessary for the survey;

(5) LOA Holder is required to ramp-up acoustic sources prior to commencing full power, unless the equipment operates on a binary on/off switch, and ensure visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using acoustic sources specified in the LOA;

(6) Prior to a ramp-up procedure starting or activating acoustic sources, the acoustic source operator (operator) must notify a designated PSO of the planned start of ramp-up as agreed upon with the Lead PSO. The notification time must not be less than 60 minutes prior to the planned ramp-up or activation in order to allow the PSOs time to monitor the clearance zone(s) for 30 minutes immediately prior to the initiation of ramp-up or activation (pre-start clearance). LOA Holder must implement a 30-minute clearance period of the clearance zones immediately prior to the commencing of the survey or when there is more than a 30-minute break in survey activities or PSO monitoring. A clearance period is a period when no marine mammals are detected in the relevant zone. During this 30-minute pre-start clearance period, the entire applicable clearance zones must be visible, except as indicated in paragraph (f)(10) of this section;

(7) Ramp-ups must be scheduled so as to minimize the time spent with the source activated;

(8) A PSO conducting pre-start clearance observations must be notified again immediately prior to reinitiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

(9) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up of acoustic sources may not begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until a specific time period has elapsed with no further sighting. The specific time period is 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for sperm and baleen whales, including North Atlantic right whales;

(10) In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (infrared (IR)/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations are allowed to commence (i.e., no delay is required) despite periods of inclement weather and/or loss of daylight. Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up;

(11) Once the survey has commenced, LOA Holder must shut down acoustic sources if a marine mammal enters a respective shutdown zone. In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations are allowed to continue (i.e., no shutdown is required) so long as no marine mammals have been detected. The shutdown requirement does not apply to small delphinids of the following genera: *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Tursiops*. If there is uncertainty regarding the identification of a marine mammal species (i.e., whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in this paragraph (f)(11) is detected in the shutdown zone;

(12) If an acoustic source has been shut down due to the presence of a marine mammal, the use of an acoustic source may not commence or resume until the animal(s) has been confirmed

to have left the Level B harassment zone or until a full 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, or 30 minutes for sperm and baleen whales, including North Atlantic right whales, have elapsed with no further sighting;

(13) LOA Holder must immediately shut down any acoustic source if a marine mammal is sighted entering or within its respective shutdown zones. If there is uncertainty regarding the identification of a marine mammal species (*i.e.*, whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in paragraph (f)(11) of this section is detected in the shutdown zone; and

(14) If an acoustic source is shut down for a period longer than 30 minutes, all clearance and ramp-up procedures must be initiated. If an acoustic source is shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for less than 30 minutes, acoustic sources may be activated again without ramp-up only if PSOs have maintained constant observation and no additional detections of any marine mammal occurred within the respective shutdown zones.

(g) *Fisheries monitoring surveys.* The following measures apply to fishery monitoring surveys:

(1) Survey gear must be deployed as soon as possible once the vessel arrives on station. Gear must not be deployed if there is a risk of interaction with marine mammals. Gear may be deployed after 15 minutes of no marine mammal sightings within 1 nautical mile (nmi; 1,852 m) of the sampling station;

(2) LOA Holder must implement the following “move-on” rule: if marine mammals are sighted within 1 nmi of the planned location and 15 minutes before gear deployment, then LOA Holder must move the vessel away from the marine mammal to a different section of the sampling area. If, after moving on, marine mammals are still visible from the vessel, LOA Holder must move again or skip the station;

(3) If a marine mammal is at risk of interacting with gear after it is deployed or set, all gear must be immediately removed from the water. If marine mammals are sighted before the gear is fully removed from the water, the vessel must slow its speed and maneuver the vessel away from the animals to

minimize potential interactions with the observed animal;

(4) LOA Holder must maintain visual marine mammal monitoring effort by trained lookouts during the entire period of time that gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval);

(5) All fisheries monitoring gear must be fully cleaned and repaired (if damaged) before each use/deployment;

(6) LOA Holder's fixed gear must comply with the Atlantic Large Whale Take Reduction Plan regulations at 50 CFR 229.32 during fisheries monitoring surveys;

(7) Trawl tows must be limited to a maximum of a 20-minute trawl time at 3.0 kn (3.5 mph);

(8) All gear must be emptied as close to the deck/sorting area and as quickly as possible after retrieval;

(9) During trawl surveys, vessel crew must open the codend of the trawl net close to the deck in order to avoid injury to animals that may be caught in the gear;

(10) Baited remote underwater video (BRUV) sampling must limit soak duration to 60 minutes or less, BRUVs must use a weighted line attached to surface and subsurface buoys that must hold a stereo-camera system in the water column and a system at the seafloor, and the vessel must remain on location with the gear while it is in use;

(11) Each chevron trap must have a vertical buoy line and must limit soak duration to 90 minutes or less;

(12) All fishery survey-related buoy lines must include the breaking strength of all lines being less than 1,700 pounds (771 kg). This may be accomplished by using whole buoy line that has a breaking strength of 1,700 lbs; or buoy line with weak inserts that result in line having an overall breaking strength of 1,700 lbs;

(13) During any survey that uses vertical lines, buoy lines must be weighted and must not float at the surface of the water and all groundlines must consist of sinking lines. All groundlines must be composed entirely of sinking lines. Buoy lines must utilize weak links. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited;

(14) All in-water survey gear, including buoys, must be properly labeled with the scientific permit number or identification as LOA Holder's research gear. All buoy markings must comply with instructions

received by the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division;

(15) All survey gear must be removed from the water whenever not in active survey use (*i.e.*, no wet storage); and

(16) All reasonable efforts that do not compromise human safety must be undertaken to recover gear.

§ 217.275 Monitoring and reporting requirements.

(a) *Protected species observer (PSO) and passive acoustic monitoring (PAM) operator qualifications.* LOA Holder must implement the following measures applicable to PSOs and PAM operators:

(1) LOA Holder must use independent, NMFS-approved PSOs and PAM operators, meaning that the PSOs and PAM operators must be employed by a third-party observer provider, and must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant crew with regard to the presence of protected species and mitigation requirements;

(2) All PSOs and PAM operators 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. The educational requirements may be waived if the PSO or PAM operator has acquired the relevant skills through a suitable amount of alternate experience. Requests for such a waiver must be submitted to NMFS Office of Protected Resources and must include written justification containing alternative experience. Alternate experience that may be considered includes, but is not limited to, previous work experience conducting academic, commercial, or government-sponsored marine mammal visual and/or acoustic surveys or previous work experience as a PSO/PAM operator;

(3) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water's surface with the ability to estimate the target size and distance (binocular use is allowable); ability to conduct field observations and collect data according to the assigned protocols; sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations; writing skills sufficient to document observations, including but not limited to, the number and species of marine mammals observed, the dates and times of when in-water construction activities

were conducted, the dates and time when in-water construction activities were suspended to avoid potential incidental take of marine mammals from construction noise within a defined shutdown zone, and marine mammal behavior; and the ability to communicate orally, by radio, or in-person, with project personnel to provide real-time information on marine mammals observed in the area;

(4) All PSOs must be trained in northwestern Atlantic Ocean marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations (as described in 217.275(b)(6) and 217.275(b)(7) of this section);

(5) All PSOs and PAM operators must successfully complete a relevant training course within the last 5 years, including obtaining a certificate of course completion;

(6) PSOs and PAM operators are responsible for obtaining NMFS' approval. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditionally-approved PSO or PAM operator may be one who has completed training in the last 5 years but has not yet attained the requisite field experience. An unconditionally approved PSO or PAM operator is one who has completed training within the last 5 years and attained the necessary experience (*i.e.*, demonstrate experience with monitoring for marine mammals at clearance and shutdown zone sizes similar to those produced during the respective activity). Lead PSO or PAM operators must be unconditionally approved and have a minimum of 90 days in an northwestern Atlantic Ocean offshore environment performing the role (either visual or acoustic), with the conclusion of the most recent relevant experience not more than 18 months previous. A conditionally approved PSO or PAM operator must be paired with an unconditionally approved PSO or PAM operator;

(7) PSOs for cable landfall construction (*i.e.*, vibratory pile installation and removal, pneumatic hammering) and HRG surveys may be unconditionally or conditionally approved. PSOs and PAM operators for foundation installation and UXO/MEC activities must be unconditionally approved;

(8) At least one on-duty PSO and PAM operator, where applicable, for each activity (*e.g.*, impact pile driving,

vibratory pile driving, UXO/MEC detonation activities, and HRG surveys) must be designated as the Lead PSO or Lead PAM operator;

(9) LOA Holder must submit NMFS previously approved PSOs and PAM operators to NMFS Office of Protected Resources for review and confirmation of their approval for specific roles at least 30 days prior to commencement of the activities requiring PSOs/PAM operators or 15 days prior to when new PSOs/PAM operators are required after activities have commenced;

(10) For prospective PSOs and PAM operators not previously approved or for PSOs and PAM operators whose approval is not current, LOA Holder must submit resumes for approval at least 60 days prior to PSO and PAM operator use. Resumes must include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO or PAM operator experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training;

(11) PAM operators are responsible for obtaining NMFS approval. To be approved as a PAM operator, the person must meet the following qualifications: The PAM operator must demonstrate that they have prior experience with real-time acoustic detection systems and/or have completed specialized training for operating PAM systems and detecting and identifying Atlantic Ocean marine mammals sounds, in particular: North Atlantic right whale sounds, humpback whale sounds, and how to deconflict them from similar North Atlantic right whale sounds, and other co-occurring species' sounds in the area including sperm whales; must be able to distinguish between whether a marine mammal or other species sound is detected, possibly detected, not detected and similar terminology must be used across companies/projects; where localization of sounds or deriving bearings and distance are possible, the PAM operators need to have demonstrated experience using this technique; PAM operators must be independent observers (*i.e.*, not construction personnel); PAM operators must demonstrate experience with relevant acoustic software and equipment; PAM operators must have the qualifications and relevant experience/training to safely deploy and retrieve equipment and program the software, as necessary; PAM operators must be able to test software and hardware functionality prior to operation; and PAM operators must have evaluated their acoustic detection

software using the PAM Atlantic baleen whale annotated data set available from the National Centers for Environmental Information (NCEI) and provide evaluation/performance metric;

(12) PAM operators must be able to review and classify acoustic detections in real-time (prioritizing North Atlantic right whales and noting detection of other cetaceans) during the real-time monitoring periods;

(13) PSOs may work as PAM operators and vice versa, with NMFS-approval; however, they may only perform one role at any one time and must not exceed work time restrictions, which must be tallied cumulatively; and

(14) All PSOs and PAM operators must complete a Permits and Environmental Compliance Plan training and a 2-day refresher session that must be held with the PSO provider and Project compliance representative(s) prior to the start of in-water project activities (*e.g.*, HRG surveys, foundation installations, cable landfall activities, UXO/MEC detonations).

(b) *General PSO and PAM operator requirements.* The following measures apply to PSOs and PAM operators and must be implemented by LOA Holder:

(1) PSOs must monitor for marine mammals prior to, during, and following impact pile driving, vibratory pile driving, pneumatic hammering, UXO/MEC detonation activities, and HRG surveys that use sub-bottom profilers (with specific monitoring durations and needs described in paragraphs (c) through (f) of this section, respectively). Monitoring must be done while free from distractions and in a consistent, systematic, and diligent manner;

(2) For foundation installation and UXO/MEC detonation, PSOs must visually clear (*i.e.*, confirm no observations of marine mammals) the entire minimum visibility zone for a full 30 minutes immediately prior to commencing activities. For cable landfall activities (*i.e.*, cofferdams, casing pipes, and goal posts) and HRG surveys, which do not have a minimum visibility zone, the entire clearance zone must be visually cleared and as much of the Level B harassment zone as possible;

(3) All PSOs must be located at the best vantage point(s) on any platform, as determined by the Lead PSO, in order to obtain 360-degree visual coverage of the entire clearance and shutdown zones around the activity area, and as much of the Level B harassment zone as possible. PAM operators may be located on a vessel or remotely on-shore, the PAM operator(s) must assist PSOs in ensuring full coverage of the clearance and shutdown zones. The PAM operator

must monitor the PAM monitoring zone for large whales;

(4) All on-duty PSOs must remain in real-time contact with the on-duty PAM operator(s). PAM operators must immediately communicate all acoustic detections of marine mammals to PSOs, including any determination regarding species identification, distance, and bearing (where relevant) relative to the pile being driven and the degree of confidence (e.g., possible, probable detection) in the determination. All on-duty PSOs and PAM operator(s) must remain in contact with the on-duty construction personnel responsible for implementing mitigations (e.g., delay to pile driving or UXO/MEC detonation) to ensure communication on marine mammal observations can easily, quickly, and consistently occur between all on-duty PSOs, PAM operator(s), and on-water Project personnel;

(5) The PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system (e.g., Mysticetus or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (i.e., delay);

(6) PSOs must use high magnification (25x) binoculars, standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. During foundation installation and UXO/MEC detonations, at least two PSOs on the pile driving and detonation-dedicated PSO vessel must be equipped with functional Big Eye binoculars (e.g., 25 x 150; 2.7 view angle; individual ocular focus; height control); these must be pedestal mounted on the deck at the best vantage point that provides for optimal sea surface observation and PSO safety. PAM operators must have the appropriate equipment (i.e., a computer station equipped with a data collection software system available wherever they are stationed) and use a NMFS-approved PAM system to conduct monitoring. PAM systems are approved through the PAM Plan, as described in § 217.274(c)(16);

(7) During periods of low visibility (e.g., darkness, rain, fog, poor weather conditions, etc.), PSOs must use alternative technology (i.e., infrared or thermal cameras) to monitor the clearance and shutdown zones as approved by NMFS; and

(8) PSOs and PAM operators must not exceed 4 consecutive watch hours on duty at any time, must have a 2-hour (minimum) break between watches, and

must not exceed a combined watch schedule of more than 12 hours in a 24-hour period. If the schedule includes PSOs and PAM operators on-duty for 2-hour shifts, a minimum 1-hour break between watches must be allowed.

(c) *PSO and PAM operator requirements during WTG and OSS foundation installation and UXO/MEC detonations.* The following measures apply to PSOs and PAM operators during WTG and OSS foundation installation and UXO/MEC detonations and must be implemented by LOA Holder:

(1) PSOs and PAM operator(s), using a NMFS-approved PAM system, must monitor for marine mammals 60 minutes prior to, during, and 30 minutes following all pile-driving and UXO/MEC detonation activities. If PSOs cannot visually monitor the minimum visibility zone prior to impact pile driving or the clearance zone prior to any UXO/MEC detonation at all times using the equipment described in paragraphs (b)(6) and (b)(7) of this section, pile-driving operations or UXO/MEC detonation must not commence or must shutdown if they are currently active;

(2) At least three on-duty PSOs must be stationed and observing from the activity platform during impact pile driving or UXO/MEC detonation and at least three on-duty PSOs must be stationed on each dedicated PSO vessel. If an aerial platform is required or used (see § 217.274(e)(7)), at least two on-duty PSOs must be actively searching for marine mammals. Concurrently, at least one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be actively monitoring for marine mammals 60 minutes before, during, and 30 minutes after impact pile driving or UXO/MEC detonation in accordance with a NMFS-approved PAM Plan; and

(3) LOA Holder must conduct PAM for at least 24 hours immediately prior to pile driving or UXO/MEC detonation activities. The PAM operator must review all detections from the previous 24-hr period immediately prior to impact pile driving and UXO/MEC detonation activities.

(d) *PSO requirements during cofferdam, casing pipe, and goal post installation and removal.* The following measures apply to PSOs during cofferdam, casing pipe, and goal post installation and removal and must be implemented by LOA Holder:

(1) At least two PSOs must be on active duty during all activities related to the installation and removal of cofferdams, casing pipes, and goal posts; and

(2) PSOs must monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles (and casing pipe, if installed), and for 30 minutes after all vibratory pile driving and pneumatic hammering activities have ceased. Sheet pile or casing pipe installation must only commence when visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of vibratory pile driving and pneumatic hammering.

(e) *PSO requirements during HRG surveys.* The following measures apply to PSOs during HRG surveys using acoustic sources that have the potential to result in harassment and must be implemented by LOA Holder:

(1) Between 4 and 6 PSOs must be present on every 24-hour survey vessel and two to three PSOs must be present on every 12-hour survey vessel;

(2) At least one PSO must be on active duty monitoring during HRG surveys conducted during daylight (i.e., from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs must be on activity duty monitoring during HRG surveys conducted at night;

(3) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating acoustic sources, during the use of these acoustic sources, and for 30 minutes after use of these acoustic sources has ceased;

(4) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(5) During daylight hours when survey equipment is not operating, LOA Holder must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(f) *Monitoring requirements during fisheries monitoring surveys.* The following measures apply during fisheries monitoring surveys and must be implemented by LOA Holder:

(1) All captains and crew conducting fishery surveys must be trained in marine mammal detection and identification; and

(2) Marine mammal monitoring must be conducted within 1 nmi from the planned survey location by the trained captain and/or a member of the scientific crew for 15 minutes prior to deploying gear, throughout gear

deployment and use, and for 15 minutes after haul back.

(g) *Reporting*. LOA Holder must comply with the following reporting measures:

(1) Prior to initiation of any on-water project activities, LOA Holder must demonstrate in a report submitted to NMFS Office of Protected Resources that all required training for LOA Holder personnel (including the vessel crews, vessel captains, PSOs, and PAM operators) has been completed;

(2) LOA Holder must use a standardized reporting system during the effective period of the LOA. All data collected related to the Project must be recorded using industry-standard software that is installed on field laptops and/or tablets. Unless stated otherwise, all reports must be submitted to NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), dates must be in MM/DD/YYYY format, and location information must be provided in Decimal Degrees and with the coordinate system information (*e.g.*, NAD83, WGS84, *etc.*);

(3) For all visual monitoring efforts and marine mammal sightings, the following information must be collected and reported to NMFS Office of Protected Resources: the date and time that monitored activity begins or ends; the construction activities occurring during each observation period; the watch status (*i.e.*, sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform); the PSO who sighted the animal; the time of sighting; the weather parameters (*e.g.*, wind speed, percent cloud cover, visibility); the water conditions (*e.g.*, Beaufort sea state, tide state, water depth); all marine mammal sightings, regardless of distance from the construction activity; species (or lowest possible taxonomic level possible); the pace of the animal(s); the estimated number of animals (minimum/maximum/high/low/best); the estimated number of animals by cohort (*e.g.*, adults, yearlings, juveniles, calves, group composition, *etc.*); the description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics); the description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity; the animal's closest distance and bearing from the pile being driven or specified HRG equipment and estimated time

entered or spent within the Level A harassment and/or Level B harassment zone(s); the activity at time of sighting (*e.g.*, vibratory installation/removal, impact pile driving, construction survey), use of any noise attenuation device(s), and specific phase of activity (*e.g.*, ramp-up of HRG equipment, HRG acoustic source on/off, soft-start for pile driving, active pile driving, *etc.*); the marine mammal occurrence in Level A harassment or Level B harassment zones; the description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.*, delay, shutdown, *etc.*) and time and location of the action; other human activity in the area, and; other applicable information, as required in any LOA issued under §§ 217.276 and 217.277;

(4) LOA Holder must compile and submit weekly reports during foundation installation to NMFS Office of Protected Resources that document the daily start and stop of all pile driving associated with the Project; the start and stop of associated observation periods by PSOs; details on the deployment of PSOs; a record of all detections of marine mammals (acoustic and visual); any mitigation actions (or if mitigation actions could not be taken, provide reasons why); and details on the noise attenuation system(s) used and its performance. Weekly reports are due on Wednesday for the previous week (Sunday–Saturday) and must include the information required under this section. The weekly report must also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is completed, weekly reports are no longer required by LOA Holder;

(5) LOA Holder must compile and submit monthly reports to NMFS Office of Protected Resources during foundation installation that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, MMSI number, and route), number of piles installed, all detections of marine mammals, and any mitigative action taken. Monthly reports are due on the 15th of the month for the previous month. The monthly report must also identify which turbines become operational and when (a map must be provided). Full PAM detection data and metadata must also be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic Right Whale Passive Acoustic Reporting

System website at <https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>;

(6) LOA Holder must submit a draft annual report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year. LOA Holder must provide a final report within 30 days following resolution of NMFS' comments on the draft report. The draft and final reports must detail the following: the total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity; marine mammal detections and behavioral observations before, during, and after each activity; what mitigation measures were implemented (*i.e.*, number of shutdowns or clearance zone delays, *etc.*) or, if no mitigative actions was taken, why not; operational details (*e.g.*, days and duration of impact and vibratory pile driving, days and number of UXO/MEC detonations, days and amount of HRG survey effort); any PAM systems used; the results, effectiveness, and which noise attenuation systems were used during relevant activities (*i.e.*, impact pile driving, and UXO/MEC detonations); summarized information related to situational reporting; and any other important information relevant to the Project, including additional information that may be identified through the adaptive management process;

(7) LOA Holder must submit its draft 5-year report to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted within 90 calendar days of the completion of activities occurring under the LOA. A 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS Office of Protected Resources comments on the draft report. If no comments are received from NMFS Office of Protected Resources within 60 calendar days of NMFS Office of Protected Resources receipt of the draft report, the report shall be considered final;

(8) For those foundation piles and UXO/MEC detonations requiring SFV measurements, LOA Holder must provide the initial results of the SFV measurements to NMFS Office of Protected Resources in an interim report after each foundation installation event and each UXO/MEC detonation event as soon as they are available and prior to a subsequent detonation or foundation installation, but no later than 48 hours

after each completed foundation installation event and 48 hours after a detonation. The report must include, at minimum: hammer energies/schedule used during pile driving, including, the total number of strikes and the maximum hammer energy; the model-estimated acoustic ranges ($R_{95\%}$ SEL and $R_{95\%}$ SPL_{rms}) to compare with the real-world sound field measurements; the estimated UXO/MEC charge size (or physical size if charge size is unknown) and donor charge size in trinitrotoluene (TNT) equivalent weight for either high (donor charge used to detonate/destroy UXO/MEC) or low order (e.g., deflagration where donor charge disrupts/consumes UXO/MEC) detonations and description of UXO/MEC (e.g., munition type, state of submergence, approximate age); peak sound pressure level (SPL_{pk}), root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}), and sound exposure level (SEL, in single strike for pile driving, SEL_{ss}), for each hydrophone, including at least the maximum, arithmetic mean, minimum, median (L50) and L5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment acoustic isopleths, calculated using the maximum-over-depth L5 (95 percent exceedance level, maximum of both hydrophones) of the associated sound metric; comparison of modeled results assuming 10-dB attenuation against the measured marine mammal Level A harassment and Level B harassment acoustic isopleths; estimated transmission loss coefficients; pile identifier name, location of the pile and UXO/MEC and each hydrophone array in latitude/longitude; depths of each hydrophone; one-third-octave band single strike SEL spectra; if filtering is applied, full filter characteristics must be reported; and hydrophone specifications including the type, model, and sensitivity. LOA Holder must also report any immediate observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. If any *in-situ* calibration checks for hydrophones reveal a calibration drift greater than 0.75 dB, pistonphone calibration checks are inconclusive, or calibration checks are otherwise not effectively performed, LOA Holder must indicate full details of the calibration

procedure, results, and any associated issues in the 48-hour interim reports;

(9) The final results of SFV measurements from each foundation installation and all UXO/MEC detonation must be submitted as soon as possible, but no later than 90 days following completion of SFV measurements for each activity. The final reports must include all details prescribed above for the interim report as well as, at minimum, the following: the peak sound pressure level (SPL_{pk}), the root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}), the single strike sound exposure level (SEL_{ss}), the integration time for SPL_{rms}, the spectrum, and the 24-hour cumulative SEL extrapolated from measurements at all hydrophones. The final report must also include at least the maximum, mean, minimum, median (L50) and L5 (95 percent exceedance) statistics for each metric; the SEL and SPL power spectral density and/or one-third octave band levels (usually calculated as decidecade band levels) at the receiver locations must be reported; the sound levels reported must be in median, arithmetic mean, and L5 (95 percent exceedance) (i.e., average in linear space), and in dB; range of TL coefficients; the local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile); baseline pre- and post-activity ambient sound levels (broadband and/or within frequencies of concern); a description of depth and sediment type, as documented in the Construction and Operation Plan (COP), at the recording and foundation installation and UXO/MEC detonation locations; the extents of the measured Level A harassment and Level B harassment zone(s); hammer energies required for pile installation and the number of strikes per pile; the charge weights and other relevant characteristics of UXO/MEC detonations; the hydrophone equipment and methods (i.e., recording device, bandwidth/sampling rate; distance from the pile and UXO/MEC where recordings were made; the depth of recording device(s)); a description of the SFV measurement hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, and other relevant information; the spatial configuration of the noise attenuation device(s) relative to the pile and UXO/MEC charge; a description of the noise abatement

system and operational parameters (e.g., bubble flow rate, distance deployed from the pile and/or UXO/MEC, etc.), and any action taken to adjust the noise abatement system. A discussion which includes any observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. The final results of SFV measurements during wind turbine operations must include source levels at 10 m from the foundation; received levels at 50 m, 100 m, and 250 m from the foundation; operational parameters (i.e., direct drive/gearbox information, turbine rotation rate); sea state conditions, and any nearby anthropogenic activities;

(10) If at any time during the project LOA Holder becomes aware of any issue or issues which may (to any reasonable subject-matter expert, including the persons performing the measurements and analysis) call into question the validity of any measured Level A harassment or Level B harassment isopleths to a significant degree, which were previously transmitted or communicated to NMFS Office of Protected Resources, LOA Holder must inform NMFS Office of Protected Resources within 1 business day of becoming aware of this issue or before the next pile is driven (or UXO/MEC is detonated), whichever comes first;

(11) If a North Atlantic right whale is acoustic detected at any time by a project-related PAM system, LOA Holder must ensure the detection is reported as soon as possible to NMFS, but no longer than 24 hours after the detection via the *24-hour North Atlantic right whale Detection Template* (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Calling the hotline is not necessary when reporting PAM detections via the template;

(12) Full detection data, metadata, and location of recorders (or GPS tracks, if applicable) from all real-time hydrophones used for monitoring during construction must be submitted within 90 calendar days after conclusion of activities requiring PAM for mitigation. Reporting must use the webform templates on the NMFS Passive Acoustic Reporting System website at <https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>. The full acoustic recordings from all real-time hydrophones must also be sent to the NCEI for archiving within 90 calendar

days after pile driving has ended and instruments have been pulled from the water;

(13) LOA Holder must submit situational reports if the following circumstances occur (including all instances wherein an exemption is taken must be reported to NMFS Office of Protected Resources within 24 hours):

(i) If a North Atlantic right whale is observed at any time by PSOs or project personnel, LOA Holder must ensure the sighting is immediately (if not feasible, as soon as possible and no longer than 24 hours after the sighting) reported to NMFS and the Right Whale Sightings Advisory System (RWSAS). If in the Northeast Region (Maine to Virginia/North Carolina border) call (866-755-6622). If in the Southeast Region (North Carolina to Florida) call (877-WHALE-HELP or 877-942-5343). If calling NMFS is not possible, reports can also be made to the U.S. Coast Guard via channel 16 or through the WhaleAlert app (<http://www.whalealert.org/>). The sighting report must include the time, date, and location of the sighting, number of whales, animal description/certainty of sighting (provide photos/video if taken), Lease Area/project name, PSO/personnel name, PSO provider company (if applicable), and reporter's contact information;

(ii) If a North Atlantic right whale is observed at any time by PSOs or project personnel, LOA Holder must submit a summary report must be sent to NMFS Greater Atlantic Regional Fisheries (nmfs.gar.incidental-take@noaa.gov), NMFS Office of Protected Resources, and NMFS Northeast Fisheries Science Center (ne.rw.survey@noaa.gov) within 24 hours with the above information and the vessel/platform from which the sighting was made, activity the vessel/platform was engaged in at time of sighting, project construction and/or survey activity at the time of the sighting (e.g., pile driving, cable installation, HRG survey), distance from vessel/platform to sighting at time of detection, and any mitigation actions taken in response to the sighting;

(iii) If an observation of a large whale occurs during vessel transit, LOA Holder must report the time, date, and location of the sighting; the vessel's activity, heading, and speed (knots); Beaufort sea state; water depth (meters); visibility conditions; marine mammal species identification to the best of the observer's ability and any distinguishing characteristics; initial distance and bearing to marine mammal from vessel and closest point of approach; and any avoidance measures taken in response to the marine mammal sighting;

(iv) LOA Holder must provide NMFS Office of Protected Resources with notification of planned UXO/MEC detonation as soon as possible but at least 48 hours prior to the planned detonation, unless this 48-hour notification would create delays to the detonation that would result in imminent risk of human life or safety. This notification must include the coordinates of the planned detonation, the estimated charge size, and any other information available on the characteristics of the UXO/MEC. If any UXO/MEC detonation occurs, within 72 hours after a detonation but before the next detonation, whichever is sooner, LOA Holder must report to NMFS Office of Protected Resources the time, date, location (latitude/longitude Decimal Degrees), charge weight size, justification on why detonation was necessary and other means of removal or avoidance could not occur, all detections of marine mammals within the UXO/MEC zones, and any mitigative action taken;

(v) In the event that personnel involved in the Project discover a stranded, entangled, injured, or dead marine mammal, LOA Holder must immediately report the observation to NMFS. If in the Greater Atlantic Region (Maine to Virginia) call the NMFS Greater Atlantic Stranding Hotline (866-755-6622); if in the Southeast Region (North Carolina to Florida), call the NMFS Southeast Stranding Hotline (877-942-5343). Separately, LOA Holder must report the incident to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic region (Maine to Virginia), NMFS Greater Atlantic Regional Fisheries Office (GARFO) (nmfs.gar.incidental-take@noaa.gov, nmfs.gar.stranding@noaa.gov) or, if in the Southeast region (North Carolina to Florida), NMFS Southeast Regional Office (SERO) (secmammalreports@noaa.gov) as soon as feasible. The report (via phone or email) must include contact (name, phone number, etc.), the time, date, and location 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; and

(vi) In the event of a vessel strike of a marine mammal by any vessel associated with the Project or if other

project activities cause a non-auditory injury or death of a marine mammal, LOA Holder must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine to Virginia) call the NMFS Greater Atlantic Stranding Hotline (866-755-6622) and if in the Southeast Region (North Carolina to Florida) call the NMFS Southeast Stranding Hotline (877-942-5343). Separately, LOA Holder must immediately report the incident to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic region (Maine to Virginia), NMFS GARFO (nmfs.gar.incidental-take@noaa.gov, nmfs.gar.stranding@noaa.gov) or, if in the Southeast region (North Carolina to Florida), NMFS SERO (secmammalreports@noaa.gov). The report must include the time, date, and location of the incident; species identification (if known) or description of the animal(s) involved; vessel size and motor configuration (inboard, outboard, jet propulsion); vessel's speed leading up to and during the incident; vessel's course/heading and what operations were being conducted (if applicable); status of all sound sources in use; description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike; estimated size and length of animal that was struck; description of the behavior of the marine mammal immediately preceding and following the strike; if available, description of the presence and behavior of any other marine mammals immediately preceding the strike; estimated fate of the animal (e.g., dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and, to the extent practicable, photographs or video footage of the animal(s). LOA Holder must immediately cease all on-water activities until the NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. LOA Holder may not resume their activities until notified by NMFS Office of Protected Resources; and

(14) LOA Holder must report any lost gear associated with the fishery surveys to the NMFS GARFO Protected Resources Division (*nmfs.gar.incidental-take@noaa.gov*) as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

§ 217.276 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, LOA Holder must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed November 19, 2028, the expiration date of this subpart.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, LOA Holder must apply for and obtain a modification of the LOA as described in § 217.277.

(d) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA must be based on a determination that the level of taking is consistent with the findings made for the total taking allowable under the regulations of this subpart.

(f) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.277 Modifications of Letter of Authorization.

(a) A LOA issued under § 217.276, and this section for the activities

identified in § 217.270(c) shall be modified upon request by LOA Holder, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOA under this subpart were implemented.

(b) For a LOA modification request by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), the LOA shall be modified, provided that:

(1) NMFS Office of Protected Resources determines that the changes to the activity or the mitigation, monitoring, or reporting do not change the findings made for the regulations in this subpart and do not result in more than a minor change in the total estimated number of takes (or distribution by species or years); and

(2) NMFS Office of Protected Resources may, if appropriate, publish a notice of proposed modified LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 217.276 or this section for the activities identified in § 217.270(c) may be modified by NMFS Office of Protected Resources under the following circumstances:

(1) Through adaptive management, NMFS Office of Protected Resources may modify (including delete, modify, or add to) the existing mitigation,

monitoring, or reporting measures (after consulting with LOA Holder regarding the practicability of the modifications), if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include, but are not limited to:

(A) Results from LOA Holder's monitoring(s);

(B) Results from other marine mammals and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS Office of Protected Resources shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §§ 217.272 and 217.276 or this section, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.278–217.279 [Reserved]

Subparts CC through KK [Reserved]

■ 3. Add and reserve subparts CC through KK.

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