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Proclamation 10841 of October 18, 2024

The President

Minority Enterprise Development Week, 2024

By the President of the United States of America

A Proclamation

Our Nation's minority-owned businesses are the glue of our communities and the engines of our economies. Investing in them is key to growing our economy from the middle out and bottom up, not the top down. When minority-owned businesses do well, everyone does well. More people get jobs, first-time business owners build generational wealth, our economy grows, and more Americans feel a sense of pride and hope in all that is possible in our Nation. This Minority Enterprise Development Week, may we celebrate the talent and ingenuity of the innovators and entrepreneurs who run our Nation's minority-owned businesses. And may we recommit to ensuring that minority-owned businesses have access to the resources they need to thrive.

Minority-owned businesses add incredible value to our economy, generating nearly \$2 trillion in revenue each year. These businesses not only provide the goods and services we need but are also sources of hope—helping people realize their American Dream, building generational wealth, and uplifting their families and communities. That is why my Administration is ensuring that minority-owned businesses have access to capital and can grow. The Small Business Administration (SBA) is lending tens of billions of dollars to small businesses that would otherwise struggle to access capital. For example, since 2020, the rate of SBA-backed loans increased by about 40 percent for Asian American-owned businesses, tripled for Black-owned businesses, and more than doubled for Latino-owned businesses. Further, my American Rescue Plan helped minority-owned small businesses keep their doors open during the COVID-19 pandemic and represents the largest-ever dedicated Federal investment to connect minority-owned small businesses to support. That law invested \$10 billion to launch and expand programs that provide critical access to capital for small businesses. The American Rescue Plan also invested \$500 million to fund over 100 awards for organizations working to connect entrepreneurs to resources to help their small businesses recover and thrive through initiatives like the SBA's Community Navigators Program, the Department of the Treasury's Small Business Opportunity Program, and the Minority Business Development Agency's Capital Readiness Program.

My Administration has also been working to ensure that minority-owned businesses get a fair shot at success. That is why I signed an Executive Order that would increase the share of total Federal contracts going to disadvantaged businesses from 10 percent to 15 percent by 2025—and in the last 3 years, we have spent over \$208 billion on small disadvantaged businesses. My Bipartisan Infrastructure Law expanded and made permanent the Minority Business Development Agency, ensuring that minority-owned businesses have access to the resources and support they need to thrive. And with my Inflation Reduction Act and CHIPS and Science Act, we are working to make sure that minority-owned businesses are benefiting from the billions of dollars we are investing in America's infrastructure, manufacturing, and clean energy industries here at home. In addition, Vice President Harris launched the Economic Opportunity Coalition in 2022 to

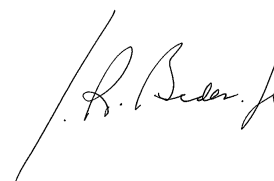
provide tens of billions of dollars in investments to underserved communities.

Since Vice President Harris and I entered office, our Administration has created 16 million jobs, and American entrepreneurs have filed nearly 20 million new business applications. Wages are growing faster than prices. Unemployment remains low. Black- and Latino-owned businesses are being created faster today than they have been in years and Federal contracts with Native American-owned companies increased by over \$8 billion from 2020 to 2023. I also take pride in my Administration's investments in Historically Black Colleges and Universities, Hispanic-Serving Institutions, Tribal Colleges and Universities, and Asian American and Native American Pacific Islander-Serving Institutions—all of which are helping launch the next generation of innovators, entrepreneurs, and business owners. These investments will ensure that their graduates will have every opportunity to lead the industries of the future and build generational wealth.

Across America—from small towns to big cities—we are seeing thousands of stories of revival, renewal, optimism, and pride. And each new business that is created is an act of hope, not just for the business owner but for the entire community. During Minority Enterprise Development Week, may we celebrate all the minority-owned businesses making our economy stronger, our Nation more competitive, and our communities more hopeful. And may we recommit to supporting their success and longevity.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 20 through October 26, 2024, as Minority Enterprise Development Week. I call upon the people of the United States to acknowledge and celebrate the achievements and contributions of minority business owners and enterprises and commit to promoting systemic economic equality.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

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

Presidential Documents

Proclamation 10842 of October 18, 2024

National Character Counts Week, 2024

By the President of the United States of America

A Proclamation

In the Oval Office, I sit surrounded by portraits of exceptional American Presidents and busts of inspiring American leaders. They remind me each and every day that we are a Nation of dreamers and doers, of promise and possibilities, and of ordinary Americans doing extraordinary things. Above all, we are a Nation of good people, who show our kindness and character through small acts every single day. This National Character Counts Week, we celebrate the core values of decency, honesty, dignity, and equality that have long defined the character of America.

Our Nation is strong, and our future is bright—in large part because of the upstanding character that resides within all Americans. I have witnessed it up close in educators like the First Lady, who inspire our Nation's youth to reach for every possibility; mothers, fathers, and parental figures who raise their children with care, courage, and grit; first responders, who run toward danger to protect others; union workers, who are building America; and brave service members, who stand on the frontlines of freedom to defend our democracy. Across the country, American workers are writing the greatest comeback story we have ever known—restoring pride in our hometowns, pride in America, and pride in knowing we can get big things done when we work together.

Since I came into office, my Administration has taken large strides toward building an America that lives up to those values. The American Rescue Plan helped keep child care programs open, families in their homes, and small businesses on their feet. We set a record for Federal contract spending on small businesses. Our historic investments across the clean energy economy are helping to combat climate change and create good-paying jobs. Through the American Rescue Plan and Bipartisan Safer Communities Act, we have made significant investments in reducing crime, preventing gun violence, and saving lives, and last year, we saw one of the lowest rates of violent crime in more than 50 years. We are also ensuring that America is a Nation where everyone is respected and where we give hate no safe harbor. That is why I signed the COVID-19 Hate Crimes Act, making it easier to report hate crimes, and hosted the United We Stand Summit to counter the corrosive effects of hate-fueled violence. My Administration continues to work to counter antisemitism, Islamophobia, and hate in all its forms and ensure that everyone is treated with dignity and respect.

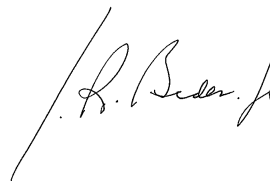
Under my Unity Agenda, we are tackling the opioid epidemic and mental health crisis, holding Big Tech accountable, supporting our veterans and their families, and ending cancer as we know it. We are investing more than \$1 billion to help schools across the country train and hire new mental health counselors through the Bipartisan Safer Communities Act, we have granted new disability benefits to over one million veterans and their families under the PACT Act, and we launched the Advanced Research Projects Agency for Health to fast-track progress on how we prevent, detect, and treat cancer and other diseases.

My father taught me that our character is not measured by how many times or how hard we get knocked down but by how quickly we get

back up. Even in the face of challenges ahead and obstacles in our way, Americans always get back up. It is what drives our great country forward and what makes our Nation strong. This week and every week, let us recommit to upholding our most essential values and remember that the sacred task of perfecting our Union is not just about any one of us but about “We the People.”

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 20 through October 26, 2024, as National Character Counts Week. Now and throughout the year, I encourage all Americans to engage in efforts that honor and express the best attributes of our character, extend a hand of fellowship to their neighbors, and unite in service to their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

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

Presidential Documents

Proclamation 10843 of October 18, 2024

National Forest Products Week, 2024

By the President of the United States of America

A Proclamation

Our forests are central to our country's heritage, history, and economy. Forests support livelihoods across Tribal Nations, rural towns, and big cities—from foresters and loggers to mill workers and carpenters—while also sustaining the health of our environment and our communities. During National Forest Products Week, we recognize that conserving our bountiful forests is critical to sustaining our economy and ensuring that Americans can enjoy the wonder of our forests for generations to come.

As a Nation, we rely on our forests for so much—from cleaning the air we breathe and the water we drink to providing the lumber and paper we use every day. But the existential threat of climate change endangers our forests, putting those jobs, livelihoods, and critical products at risk. After decades of fire suppression and ignoring climate change, wildfire seasons have become wildfire years, burning down communities, destroying forest ecosystems, and upending people's lives.

My first year in office, I launched the “America the Beautiful” initiative to conserve at least 30 percent of all our Nation's lands and waters by 2030 through local, voluntary efforts across the country while empowering foresters and farmers to advance sustainable practices to keep working lands productive. These efforts will help strengthen our economy and pass on a healthier planet to our children and grandchildren.

When I came into office, I was determined to conserve our forests while protecting the people who rely on them for jobs. My Bipartisan Infrastructure Law is creating jobs managing our forests, restoring ecosystems, and preventing catastrophic fires. It is investing in the removal of overgrown vegetation near homes and power lines, preparing evacuation routes in areas at risk of wildfires, removing invasive plant species from forests that can cause fire to spread, and planting native tree species that are more resilient to the changing climate. And my Inflation Reduction Act made the largest climate investment ever, putting people to work planting trees, sustainably managing our forests, and working on fire prevention. Together, these actions are producing new jobs that help us care for our forests and keep all of us safe from wildfires.

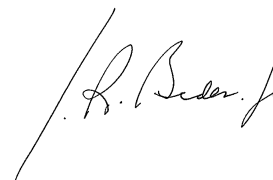
At the same time, my Administration is working to support the American workers and rural communities producing our forest products. We have awarded millions of dollars in grants to American businesses that support forest conservation, expand the sustainable use of American wood products, and find innovative ways to use our wood waste materials, including to build strong and sustainable buildings. I also take pride in having raised the Federal firefighter minimum wage to \$15 per hour—an important first step in ensuring the people who run into flames to keep all of us safe are paid what they deserve.

Conserving our forests is good for our economy, the planet, and the soul of our Nation. This week, may we recommit to responsibly stewarding our forests and the abundant resources they provide so that we may all enjoy their benefits and beauty for years to come.

To recognize the importance of the many products generated by our Nation's forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as “National Forest Products Week” and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 20 through October 26, 2024, as National Forest Products Week. I call upon the people of the United States to join me in this observance and in recognizing all Americans who are responsible for the stewardship of our Nation's beautiful forested landscapes.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

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

Rules and Regulations

Federal Register

Vol. 89, No. 205

Wednesday, October 23, 2024

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2412; Project Identifier AD-2024-00535-T; Amendment 39-22868; AD 2024-21-01]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 717-200 airplanes. This AD was prompted by a report of cracks found in the rear spar lower cap forward leg and lower aft skin of the right wing, during investigation of a fuel leak. This AD requires repetitive inspections for any fuel leak or crack of the lower aft skins, external doublers, and rear spar lower caps of the left and right wings, and corrective actions and inspection reports if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 7, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 7, 2024.

The FAA must receive comments on this AD by December 9, 2024.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2024-2412; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website *myboeingfleet.com*.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at *regulations.gov* under Docket No. FAA-2024-2412.

FOR FURTHER INFORMATION CONTACT:

Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-5238; email: *Wayne.Ha@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include Docket No. FAA-2024-2412 and Project Identifier AD-2024-00535-T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal

information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-5238; email: *Wayne.Ha@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that, during investigation of a fuel leak, a crack was found in the rear spar lower cap forward leg of the right wing. Subsequent inspections revealed multiple cracks in the wing lower aft skin in the same general area as the cracks found in the spar cap, including one approximately 7 inches in length that is not capable of sustaining a limit load event. This condition, if not addressed, could lead to reduced structural integrity of the airplane and loss of control of the airplane, which could result in a catastrophic event. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024. This material specifies procedures for repetitive general visual inspections of the lower aft skins and external doublers of the left and right wings for any fuel leak; repetitive general visual inspections of the rear spar lower caps of the left and right wings for any fuel leak; repetitive surface eddy current high frequency inspections of the rear spar lower caps of the left and right wings for any crack; repetitive surface eddy current high frequency inspections of the lower aft skins of the left and right wings for any crack; and obtaining and following approved repair instructions if any fuel leak or crack is detected during any inspection. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

AD Requirements

This AD requires accomplishing the actions specified in the material already described. This AD also requires sending the inspection results to the airplane manufacturer if any crack or fuel leak is found during any inspection.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because the existing maintenance program may not be sufficient to detect a crack before it reaches a critical length since it could occur in an area covered by the external doubler. Such cracks in the wing rear spar lower caps and lower aft skin are not capable of sustaining a

limit load event. This unsafe condition, if not addressed, could lead to reduced structural integrity of the airplane and loss of control of the airplane, which could result in a catastrophic event. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

The compliance time in this AD is shorter than the time necessary for the public to comment and for publication of the final rule. In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 118 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive Inspections	27 work-hours × \$85 per hour = \$2,295 per inspection cycle.	\$0	\$2,295 per inspection cycle.	\$270,810 per inspection cycle.

The FAA estimates the following costs to do any necessary reporting that

would be required based on the results of the inspections. The FAA has no way

of determining the number of aircraft that might need this reporting:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reporting	1 work-hour × \$85 per hour = \$85 per inspection cycle	\$0	\$85 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to 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. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of

information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–21–01 The Boeing Company:

Amendment 39–22868; Docket No. FAA–2024–2412; Project Identifier AD–2024–00535–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 7, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 717–200 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by cracks found in the rear spar lower cap forward leg and lower aft skin of the right wing, during investigation of a fuel leak. The FAA is issuing this AD to address cracks in the wing rear spar lower caps and lower aft skins that are not capable of sustaining a limit load event. The unsafe condition, if not addressed, could lead to reduced structural integrity of the airplane and loss of control of the airplane, which could result in a catastrophic event.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in table 1 or table 2 of Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024, do all applicable actions identified in, and in accordance with, table 1 or table 2 of Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024.

Note 1 to paragraph (g): Additional guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Multi Operator Message MOM–MOM–24–0484–01B, dated September 16, 2024.

(h) Exceptions to Boeing Multi Operator Message Specifications

(1) Where table 1 and table 2 of Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024, refer to the "issue date of this Alert MOM," this AD requires using the effective date of this AD.

(2) Where table 1 and table 2 of Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024, specify contacting Boeing for repair instructions, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(3) Where table 1 and table 2 of Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024, specify inspecting the "wing lower aft skins for any fuel leak," this AD requires replacing that text with "wing lower aft skins and doublers for any fuel leak."

(i) On-Condition Report

If any crack or fuel leak is found during any inspection required by paragraph (g) of this AD, at the applicable time specified in paragraph (i)(1) or (2) of this AD, submit a report of positive findings to The Boeing Company via the Boeing Communication

System (BCS). The report must include the crack size, crack location, and fuel leak location, as applicable.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5238; email: Wayne.Ha@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Multi Operator Message MOM–MOM–24–0482–01B, dated September 13, 2024.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the

availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). 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.

Issued on October 9, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–24443 Filed 10–21–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 241010–0270]

RIN 0694–AJ80

Addition of Entities, Revision of an Entry, and Removal of Entries on the Entity List

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

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding 26 entries to the Entity List, under the destinations of the People's Republic of China (China), Egypt, Pakistan, and the United Arab Emirates (UAE) and modifies one existing entry under the destination of China. This rule also removes two entities from the entity list: one entity listed under the destination of China, and a second entity listed under the destinations of Canada, India, Japan, Malaysia, Sweden and the UAE.

DATES: This rule is effective October 23, 2024.

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

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities

contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the “License Review Policy” column on the Entity List, and the impact on the availability of license exceptions, if applicable, is described in the relevant **Federal Register** document that added the entity to the Entity List. BIS places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

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

The Export Control Reform Act (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852) provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. Section 1753(a) of ECRA (50 U.S.C. 4812) authorizes the regulation of “(1) the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons.” Section 1754(a) of ECRA (50 U.S.C. 4813) authorizes, *inter alia*, establishing and maintaining a list of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in Section 1752(2)(A) of ECRA, and restricting exports, reexports, and in-country transfers of any controlled items to any foreign person or end-use so listed. The changes being made in this final rule are needed for the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction to foreign persons that have been determined to be involved in activities that are contrary to the national security and foreign policy interests of the United States.

Entity List Decisions

Additions to the Entity List

The ERC determined to add Beijing Moreget Creative Technology Co., Ltd.,

under the destination of China, to the Entity List. This entity is being added for acquiring and attempting to acquire U.S.-origin items related to aviation simulation technology in support of China's military modernization. In addition, the ERC determined to add Shenzhen Dragonfly Supply Chain Co., Ltd. (Shenzhen Dragonfly) and Small Leopard Electronics Co., Limited (Small Leopard), under the destination of China, to the Entity List. Small Leopard Electronics was party to a transaction with an end user now understood to be a supplier of goods to an Iranian procurement network. Small Leopard, along with the closely connected company Shenzhen Dragonfly, is being added because Small Leopard repeatedly engaged in dilatory and evasive conduct in providing information to the U.S. Department of Commerce during end-use checks, including after being added to the Unverified List. These activities are contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR.

The ERC also determined to add Detail Technology (HK) Limited, L-Tong Electronic Technology Company, and Shenzhen Jiachuang Weiye Technology Company, Ltd., all under the destination of China, to the Entity List. These additions are being made on the basis of actions and activities that are contrary to the national security and foreign policy interests of the United States. Specifically, these companies have procured and/or attempted to procure U.S.-origin items for Iran's weapons of mass destruction (WMD) and unmanned aerial vehicle (UAV) programs. This activity is contrary to the national security and foreign policy interests of the United States under § 744.11 of the EAR.

The ERC determined to add Ansar Mahmood, Combine Communications, Engineering Aura, Haris M. Fazal, Mansoor Ahmed Malik, Rehman Feroze, Technologic Enterprises, United Institute of Technical Professional Education, and Usman Feroze, all under the destination of Pakistan, to the Entity List. These entities are added pursuant to § 744.11 of the EAR for engaging in activities contrary to the national security and foreign policy interests of the United States. Specifically, these entities are acting as front companies and procurement agents for Advanced Engineering Research Organization (AERO), a Pakistan-based company first added to the BIS Entity List in 2014 (79 FR 56003, September 18, 2014). Since 2010, AERO has utilized intermediaries and front companies to procure U.S.-origin items by disguising the end uses

and end users of the items from U.S. exporters, thereby circumventing BIS licensing requirements. These end users include Pakistan's Air Weapons Complex, a Pakistani government entity on the Entity List since 2016 (81 FR 90714, December 15, 2016), responsible for Pakistan's cruise missile and strategic UAV programs. This activity is contrary to the national security and foreign policy interests of the United States under § 744.11 of the EAR.

In addition, the ERC determined to add Asia Pacific Trade Hub, Innovative Equipment (Private) Limited, Konsult Tek (Pvt) Ltd, Marriala Consultants, Metal Paint Products (Pvt) Ltd, Rockside Enterprise, and Zaheer & Sons, all under the destination of Pakistan, to the Entity List. These additions are being made for their contributions to Pakistan's ballistic missile program. This activity is contrary to the national security and foreign policy interests of the United States under § 744.11 of the EAR.

The ERC determined to add Steel Design LLC to the Entity List under the destination of Egypt, and Ahmed Abdellatif, Ayman Elgindy, and Steel Design FZE, under the destination of the UAE for acquiring and attempting to acquire U.S.-origin items, in particular civil aircraft parts, on behalf of a Russian buyer and attempting to evade the sanctions and export controls imposed following Russia's invasion of Ukraine in February 2022. These activities are contrary to U.S. national security and foreign policy interests under § 744.11(b) of the EAR.

For these 26 entities, a license is required for all items subject to the EAR. License applications will be reviewed under a presumption of denial. This final rule adds the following 26 entities to the Entity List and includes, where appropriate, aliases:

China

- Beijing Moreget Creative Technology Co., Ltd.;
- Detail Technology (HK) Limited;
- L-Tong Electronic Technology Company;
- Shenzhen Dragonfly Supply Chain Co., Ltd.;
- Shenzhen Jiachuang Weiye Technology Company, Ltd.; and
- Small Leopard Electronics Co., Limited

Egypt

- Steel Design LLC

Pakistan

- Ansar Mahmood;
- Asia Pacific Trade Hub;
- Combine Communications;
- Engineering Aura;

- Haris M. Fazal;
- Mansoor Ahmed Malik;
- Metal Paint Products (Pvt) Ltd;
- Innovative Equipment (Private) Limited;
- Konsult Tek (Pvt) Ltd;
- Marriala Consultants;
- Rehman Feroze;
- Rockside Enterprise;
- Technologic Enterprises;
- United Institute of Technical Professional Education;
- Usman Feroze; and
- Zaheer & Sons

United Arab Emirates

- Ahmed Abdellatif
- Ayman Elgindy; and
- Steel Design FZE

Modification of One Existing Entry on the Entity List

This final rule implements the decision of the ERC to modify one existing entry on the Entity List, the entry for Chengdu Poyotencon Technology, a Chinese entity, by adding one address for a total of two addresses.

Removal of Two Entries on the Entity List

The ERC determined to remove Sandvine Incorporated from the Entity List, under the destinations of Canada, India, Japan, Malaysia, Sweden, and the UAE, based on the information BIS received pursuant to § 744.16 of the EAR and the review the ERC conducted in accordance with procedures described in supplement no. 5 to part 744 of the EAR. The ERC also determined to remove Hefei Bitland Information Technology Co. Ltd., under the destination of China, from the Entity List, based on information BIS received pursuant to § 744.16 of the EAR and the review the ERC conducted in accordance with procedures described in supplement no. 5 to part 744 of the EAR.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on October 23, 2024, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before November 22, 2024. Any such items not

actually exported, reexported or transferred (in-country) before midnight, on November 22, 2024, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. In particular, Section 1753 of ECRA (50 U.S.C. 4812) authorizes the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction. Further, Section 1754(a)(1)–(16) of ECRA (50 U.S.C. 4813(a)(1)–(16)) authorizes, inter alia, establishing and maintaining a list of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in Section 1752(2)(A), and restricting exports, reexports, and in-country transfers of any controlled items to any foreign person or end-use so listed; apprising the public of changes in policy, regulations, and procedures; and any other action necessary to carry out ECRA that is not otherwise prohibited by law. Pursuant to Section 1762(a) of ECRA (50 U.S.C. 4821(a)), these changes can be imposed in a final rule without prior notice and comment.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, or will be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at: <https://www.reginfo.gov/public/do/PRAMain>.

3. This rule does not contain policies with federalism implications as that

term is defined in Executive Order 13132.

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

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

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—END-USE AND END-USER CONTROLS

- 1. The authority citation for part 744 is revised to read as follows:
Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O.

- 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 18, 2024, 89 FR 77011 (September 20, 2024).
- 2. Supplement no. 4 is amended by:
 - a. Under CANADA, removing the entry for “Sandvine Incorporated;”
 - b. Under CHINA, PEOPLE’S REPUBLIC OF,
 - i. Adding an entry in alphabetical order for “Beijing Moreget Creative Technology Co., Ltd.,”
 - ii. Revising the entry for “Chengdu Poyotencon Technology;”
 - iii. Adding, in alphabetical order, an entry for “Detail Technology (HK) Limited;”
 - iv. Removing the entry for “Hefei Bitland Information Technology Co. Ltd.,” and
 - v. Adding entries, in alphabetical order for “L-Tong Electronic Technology Company;” “Shenzhen Dragonfly Supply Chain Co., Ltd.,” “Shenzhen Jiachuang Weiye Technology Company, Ltd.,” and “Small Leopard Electronics Co., Limited;”
 - c. Under EGYPT, adding an entry in alphabetical order for “Steel Design LLC;”

- d. Under INDIA, removing the entry for “Sandvine Incorporated;”
 - e. Under JAPAN, removing the entry for “Sandvine Incorporated;”
 - f. Under MALAYSIA, removing the entry for “Sandvine Incorporated;”
 - g. Under PAKISTAN, adding entries in alphabetical order for “Ansar Mahmood;” “Asia Pacific Trade Hub;” “Combine Communications;” “Engineering Aura;” “Haris M. Fazal;” “Mansoor Ahmed Malik;” “Metal Paint Products (Pvt) Ltd;” “Innovative Equipment (Private) Limited;” “Konsult Tek (Pvt) Ltd;” “Marriala Consultants;” “Rehman Feroze;” “Rockside Enterprise;” “Technologic Enterprises;” “United Institute of Technical Professional Education;” “Usman Feroze;” and “Zaheer & Sons;”
 - h. Under SWEDEN, removing the entry for “Sandvine Incorporated;” and
 - i. Under UNITED ARAB EMIRATES,
 - i. Adding entries in alphabetical order for “Ahmed Abdellatif;” “Ayman Elgindy;”
 - ii. Removing the entry for “Sandvine Incorporated;” and
 - iii. Adding in alphabetical order, an entry for “Steel Design FZE.”
- The revision and additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
CHINA, PEOPLES REPUBLIC OF.	Beijing Moreget Creative Technology Co., Ltd., a.k.a., the following three aliases: —Beijing Mojie Innovation Technology Co., Ltd.; —Beijing Moreget Innovation Technology; and —Beijing Moji Innovation Technology Co., Ltd. Room 101, Building 6, Yingfu Road, Beijing, China; and No. 1, Yard 30, Wuquan South Road, Fengtai District, Beijing; and Room 101, Floor 1, Building 14, Baosheng South Road, Beijing, China; and Room 702, Tower B, Austrian International Center, Beijing, China; and Haige Industrial Park, Yard 30, South Wuquan Road, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Chengdu Poyotencon Technology, No. 175, Shanbanqiao Road, Chenghua District, Chengdu City, Sichuan Province, China; and Number 508 1–4–1302, East Second Section of Second Ring Road, Chenghua District, Chengdu City, Sichuan Province, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial.	88 FR 38741, 06/14/23. 89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Detail Technology (HK) Limited, a.k.a., the following four aliases: —Ditai Technology; —Shenzhen Ditai Technology Co., Ltd.; —Detail Technology Global Ltd; and —Ditai Keji Xianggang Youxian Gongs.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.

Country	Entity	License requirement	License review policy	Federal Register citation
	Room 2309, 23/F, Ho King Commercial Center, 16 Fayuen Street, Mongkok Kowloon, Hong Kong; <i>and</i> Room F, 11th Floor, Hainiog Plaza, Langhua District, Shenzhen, China; <i>and</i> Room F, Floor 11, Longhua District, Shenzhen City, Guangdong, Province, China; <i>and</i> 10F, Kras Asia Industrial Building, No. 79 Hung to Road, Kwun Tong, Kowloon, Hong Kong.			
	L-Tong Electronic Technology Company, Room 411, Yue Peng Building, Jiabin Road, Luohu District, Shenzhen, China; <i>and</i> Room 205, 2/F, Winful Center, 30 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Shenzhen Dragonfly Supply Chain Co., Ltd.; a.k.a., the following two aliases: —Shenzhen Small Leopard Electronic Co., Ltd.; <i>and</i> —Shenzhen Xiaobao Electronics Co., Ltd.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	A-606, Languang Science and Technology Building, No. 7, Songpingshan Xixi Road, Nanshan District, Shenzhen, China; <i>and</i> 7, 803, Building A7, Chuangzhi Cloud City, Nanshan District, Shenzhen, China; <i>and</i> Building 14, South of the Third Floor, Fugingshan, Tangtou Third Industrial Zone, Bao'an District, Shenzhen, China; <i>and</i> Building 3, 5th Floor Factory Building, Hengtongfa Industrial Zone, Tangtou Industrial Park, Tangtou Community, Shiyan Street, Baoan District, Shenzhen City, China.			
	Shenzhen Jiachuang Weiye Technology Company, Ltd., a.k.a. the following one alias: —JCWYIC.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	19D, Block D, Huaqiang Plaza, Huaqiang North Road, Futian District, Shenzhen, Guangdong, China; <i>and</i> 518 West Building, Feiyada Building, Zhenhua Road, Futian District, Shenzhen, China; <i>and</i> Room 2702, Building A, Jiahe Huaqiang Building, Shennan Middle Road, Futian District, Shenzhen, China.			
	Small Leopard Electronics Co., Limited, a.k.a., the following alias: —Xiaobao Electronics Co., Ltd.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Flat/Rm 7022 BLK D 7/F Tak Wing Ind Building 3, Tsun Wen Road Tuen Mun, New Territories, Hong Kong; <i>and</i> Flat/Rm S, 4/F, Kwun, Tong Ind Centre Phase 2, 460–470, Kwun Tong Road, Kwun Tong, Kowloon, Hong Kong.			
EGYPT	Steel Design LLC, a.k.a., the following two aliases: —TRME; <i>and</i> —Turbo Resources.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	1 Zahra El Maadi El Morshedy Building, Tower A, Cairo, Egypt; <i>and</i> Rehana Tower A1 Elmorshedy, Zahra El Maadi, Cairo, Egypt; <i>and</i> Memaar El Morshedy, Rayhanah Residence Zahraa Maadi, Cairo, Egypt			
PAKISTAN	Ansar Mahmood, Suite No. 2, 4th Fl., Imtiaz Center, Main Market Gulberg, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Asia Pacific Trade Hub, a.k.a., the following one alias: —M/S Asia Pacific Trade Hub PVT. LTD.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	No. 813, 8th Floor, Al-Hafeez Heights, Ghalib Road, Gulber-III, Lahore, Pakistan.			
	Combine Communications, Suite No. 2, 4th Fl., Imtiaz Center, Main Market, Gulberg, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.

Country	Entity	License requirement	License review policy	Federal Register citation
	Engineering Aura, Suite No. 28, Al-Behbood Plaza, 2nd Floor, The Mall, Wah, Punjab, Rawalpindi, 47040 Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Haris M. Fazal a.k.a. the following one alias: —Chaudhary Haris. Suite No. 2, 4th Fl., Imtiaz Center, Main Market Gulberg, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Mansoor Ahmed Malik, 78–A, The Mall, Saddar, Punjab, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Metal Paint Products (Pvt) Ltd, a.k.a., the following two aliases: —ERDC Metal Paint Products (Pvt) Ltd; and —MPPL. No. 158, Street 9, I–10/3, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Innovative Equipment (Private) Limited, a.k.a., the following one alias: —Innovative Equipment. No. 5, Talsa Road, Lalazar, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Konsult Tek (Pvt) Ltd, a.k.a., the following one alias: —Konsulttek. No. 33, Second Floor, Rose-1 Plaza, I–8 Markaz, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Marriala Consultants, 37–R, St–1, Phase–2, DHA, Lahore–54792, Punjab, Pakistan; and Main Bedian Rd, Ahmed Colony, Near Heir, Lahore–54792, Punjab, Pakistan; and 47–G, Phase–1 Commercial Area, DHA, Lahore–54792, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Rehan Feroze, Suite No. 28, Al-Behbood Plaza, The Mall, Wah Cantt, Wah, Punjab, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Rockside Enterprise, 10th Floor, Emerald Tower, Main Clifton Road, Karachi 75600, Pakistan; and Street 17 Karachi, Sindh Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Technologic Enterprises, B–20 Ramzan Plaza, Bank Road, Saddar, Rawalpindi, Punjab, Pakistan; and 17–B Ramzan Bank Road NTN#2567865–5, Rawalpindi, Pakistan; and 257 Street 6, Ali Block H–13/3, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	United Institute of Technical Professional Education, 78–A, The Mall, Saddar, Punjab, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Uzman Feroze, B–20 Ramzan Plaza, Bank Road, Saddar, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Zaheer & Sons, a.k.a., the following one alias: —Zaheer Sons. Suite 2, 3rd Floor, Nadir House, I.I. Chundrigar Road, Karachi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
UNITED ARAB EMIRATES.	Ahmed Abdellatif, T5–055, SAIF Zone, Sharjah, United Arab Emirates; and SAIF office, T5–055, Sharjah, 513756, United Arab Emirates; and SAIF Executive Office, P–8–03–01, Sharjah, 12702PA 121702, United Arab Emirates; and Shariah, SAIF Office P8–03–01, P.O. Box 513756, United Arab Emirates.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.

Country	Entity	License requirement	License review policy	Federal Register citation
	Ayman Elgindy, T5–055, SAIF Zone, Sharjah, United Arab Emirates; <i>and</i> SAIF office, T5–055, Sharjah, 513756, United Arab Emirates; <i>and</i> SAIF Executive Office P–8–03–01, Sharjah, 12702PA 121702, United Arab Emirates; <i>and</i> Shariah, SAIF Office P8–03–01 P.O. Box 513756, United Arab Emirates.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	Steel Design FZE, a.k.a., the following two aliases: —TRME; and —Turbo Resources.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER]; 10/23/2024.
	T5–055, SAIF Zone, Sharjah, United Arab Emirates; <i>and</i> SAIF office, T5–055, Sharjah, 513756, United Arab Emirates; <i>and</i> SAIF Executive Office, P–8–03–01, Sharjah, 12702PA 121702, United Arab Emirates; <i>and</i> Shariah, SAIF Office P8–03–01, P.O. Box 513756, United Arab Emirates; <i>and</i> SAIF Office P8–03–01, P.O. 513756, Sharjah, United Arab Emirates.			

* * * * *

Matthew S. Borman,

*Deputy Assistant Secretary for Strategic Trade
and Technology Security.*

[FR Doc. 2024-24562 Filed 10-21-24; 11:15 am]

BILLING CODE 3510-33-P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

18 CFR Parts 50 and 380

[Docket No. RM22-7-001; Order No. 1977-A]

Applications for Permits to Site Interstate Electric Transmission Facilities

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; Order addressing arguments raised on rehearing, and setting aside prior order, in part.

SUMMARY: In this order, the Federal Energy Regulatory Commission addresses arguments raised on rehearing of Order No. 1977, which amended the Commission’s regulations governing applications for permits to site electric transmission facilities under section 216 of the Federal Power Act, as amended by the Infrastructure Investment and Jobs Act of 2021, and amended its National Environmental Policy Act procedures.

DATES: This rule is effective November 22, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: 1. On May 13, 2024, the Federal Energy Regulatory Commission (Commission) issued Order No. 1977.¹ Order No. 1977 amended the Commission's regulations governing applications for permits to site electric transmission facilities: to be consistent with section 216 of the Federal Power Act (FPA),² as amended by the Infrastructure Investment and Jobs Act (IIJA);³ to modernize certain regulatory requirements; and to incorporate other updates and clarifications to ensure the efficient and timely review of permit applications. On June 12, 2024, Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, Union of Concerned Scientists, WE ACT for Environmental Justice, and the Yurok Tribe (together, Public Interest Organizations); Louisiana Public Service Commission (Louisiana Commission); New York State Public Service Commission (New York

¹ *Applications for Permits to Site Interstate Elec. Transmission Facilities*, Order No. 1977, 89 FR 46682 (May 29, 2024), 187 FERC ¶ 61,069 (2024).

² 16 U.S.C. 824p.

³Public Law 117–58, sec. 40105, 135 Stat. 429 (2021).

Commission);⁴ and Pennsylvania Public Utility Commission (Pennsylvania Commission) filed timely requests for rehearing.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁵ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,⁶ we are modifying the discussion in Order No. 1977 and setting aside the order, in part, as discussed below.⁷

I. Background

3. The Energy Policy Act of 2005⁸ added section 216 to the FPA, providing for Federal siting of electric transmission facilities under certain circumstances.⁹ Under section 216, Federal siting authority is divided between the U.S. Department of Energy (DOE) and the Commission. Section 216(a) directs DOE to conduct a study and issue a report on electric transmission congestion and authorizes DOE to designate certain transmission-constrained or congested geographic areas as national interest electric

⁴New York Commission seeks rehearing, or in the alternative, clarification of Order No. 1977.

⁵ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁶ 16 U.S.C. 825(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁷ *Allegheny Def. Project*, 964 F.3d at 16–17.

⁸Public Law 109–58, sec. 1221, 119 Stat. 594 (Aug. 8, 2005).

⁹Order No. 1977 provides a more detailed discussion of the legislative, regulatory, and judicial actions that preceded the final rule. *See* Order No. 1977, 187 FERC ¶ 61,069 at pt I.

transmission corridors (National Corridors). Section 216(b) provides that the Commission may issue permits to construct or modify electric transmission facilities in a designated National Corridor under specified circumstances.

4. On November 16, 2006, the Commission issued Order No. 689,¹⁰ which implemented new regulations for section 216 permit applications by adding part 50 to the Commission's regulations and by modifying part 380 of the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA).¹¹

5. On November 15, 2021, the IJA amended FPA section 216. With respect to the Commission's electric transmission siting authority, the IJA amended section 216(b)(1)(C) to expressly provide that the Commission may issue a permit if a State has denied an application. As amended, section 216(b)(1)(C) provides that the Commission's siting authority is triggered when a State commission or other entity with authority to approve the siting of the transmission facilities: (i) has not made a determination on a siting application by one year after the later of the date on which the application was filed or the date on which the relevant National Corridor was designated; (ii) has conditioned its approval such that the proposed project will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible; or (iii) has denied an application.¹²

6. Additionally, the IJA amended section 216(e), which grants a permit holder the right to acquire the necessary right-of-way by eminent domain.¹³ As amended, section 216(e)(1) requires the Commission to determine, as a precondition to a permit holder exercising eminent domain authority, that the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process.¹⁴

7. On December 15, 2022, the Commission issued a Notice of Proposed Rulemaking (NOPR) which proposed revisions to parts 50 and 380 of the Commission's regulations to,

among other things, address the IJA's amendments to FPA section 216.¹⁵ After considering comments on the NOPR, on May 13, 2024, the Commission issued its final rule in Order No. 1977.

8. On June 12, 2024, Public Interest Organizations, Louisiana Commission, New York Commission, and Pennsylvania Commission requested rehearing. The rehearing requests raise issues related to when the Commission's jurisdiction is triggered; how State siting decisions and evidentiary records, including comments filed in State proceedings, will be considered in the Commission proceeding; the scope of the Applicant Code of Conduct and the Landowner Bill of Rights; and the analysis of climate impacts under NEPA. We address the issues raised on rehearing below.

II. Discussion

A. Commission Jurisdiction

1. Order No. 1977

9. FPA section 216(b)(1)(C)(i), as amended by the IJA, provides that the Commission may issue a permit for the construction or modification of electric transmission facilities in a National Corridor if a State commission or other entity with authority to approve the siting of the transmission facilities has not made a determination on a siting application by one year after the later of the date on which the application was filed or the date on which the relevant National Corridor was designated.¹⁶ The final rule revised § 50.6(e) of the Commission's regulations, which describes the information that each permit application must provide. As relevant here, § 50.6(e)(3)(i) requires that an applicant seeking to invoke the Commission's jurisdiction under FPA section 216(b)(1)(C)(i) must provide, at the time it files an application with the Commission, evidence that a State has not made a determination on an application seeking approval pursuant to applicable law.

2. Requests for Rehearing

10. New York Commission contends that the Commission's failure to explain how the one-year timeframe triggering the Commission's jurisdiction will be calculated is arbitrary and capricious.¹⁷ Reiterating its comments on the NOPR,

New York Commission recommends that the one-year period commence once an application is deemed complete according to applicable State requirements.¹⁸ It asserts that failure to impose such a requirement leaves the States with significant regulatory uncertainty and could lead to incomplete applications and rushed review.¹⁹ New York Commission states that the Commission's jurisdiction should not be triggered until a year after a complete application has been filed with the State in order to disincentivize applicants from trying to "game" the system by filing deficient applications with the State just to start and exhaust the one-year timeframe.²⁰

11. New York Commission asks the Commission to revise the final rule to specify that, where a State has not made a determination on an application, the Commission's jurisdiction is dependent upon the filing of a complete application with the State.²¹ In the alternative, New York Commission asks that the Commission clarify for prospective applicants how the Commission will determine when the statute's one-year period begins to run.

3. Commission Determination

12. We agree with New York Commission that the filing of a complete application with the State is an important consideration when Commission jurisdiction is based upon FPA section 216(b)(1)(C)(i). However, we do not find it necessary to revise the final rule to specify that the Commission's consideration of an application pursuant to FPA section 216(b)(1)(C)(i) must hinge upon the filing of a complete application with the State.²² As the Commission explained previously, our regulations require that the applicant file information concerning the status of the applicant's filings before State agencies at various points during the Commission's pre-

¹⁸ *Id.* at 6–7.

¹⁹ *Id.* at 6, 7.

²⁰ *Id.* at 6.

²¹ *Id.* at 7–8.

²² We note that FPA section 216(b)(1)(C)(i) provides that the Commission may issue a permit if a State has not made a determination on an application by the date that is one year after the date on which the application was filed, or the date on which the relevant National Corridor was designated, whichever is later. But the statute does not explicitly state that the one-year period is triggered by the filing of a complete application. Compare 16 U.S.C. 824p(b)(1)(C)(i) with *id.* 824p(b)(h)(4)(B) (requiring all permit decisions and environmental reviews be completed within one year "once an application has been submitted with such data as the Secretary [of Energy] considers necessary")

¹⁰ *Reguls. for Filing Applications for Permits to Site Interstate Elec. Transmission Facilities*, Order No. 689, 117 FERC ¶ 61,202 (2006) (Order No. 689), *reh'g denied*, 119 FERC ¶ 61,154 (2007) (Order No. 689 Rehearing).

¹¹ 42 U.S.C. 4321 *et seq.* See also 18 CFR pt. 380 (Commission's regulations implementing NEPA).

¹² 16 U.S.C. 824p(b)(1)(C).

¹³ *Id.* 824p(e)(1).

¹⁴ *Id.*

¹⁵ *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 88 FR 2770 (Jan. 17, 2023), 181 FERC ¶ 61,205 (2022) (NOPR), *errata notice*, 182 FERC ¶ 61,020 (2023). The Commission's errata notice for the NOPR, issued on January 17, 2023, reflected certain stylistic revisions requested by the **Federal Register** as well as minor, non-substantive editorial revisions.

¹⁶ 16 U.S.C. 824p(b)(1)(C).

¹⁷ New York Commission Rehearing Request at 5.

filing process.²³ Specifically, § 50.5(b)(3) requires that the applicant, at the initial consultation meeting in pre-filing, discuss when it filed its application with the State and the status of that application. Section 50.5(c)(5) requires that the applicant's pre-filing request describe any work completed or actions taken in conjunction with the State proceeding. Finally, under § 50.6(e)(3)(i), the applicant must provide evidence, at the time an application is filed with the Commission, that the State has not made a determination on an application seeking approval under applicable law.

13. The Commission will take into account all information provided by the applicant and stakeholders, including the relevant States, concerning the timing and status of the State proceeding in determining whether an application meets the requirements of FPA section 216(b)(1)(C)(i). When rendering a decision on a permit application, the Commission will consider, on a case-by-case basis, arguments regarding whether one year has passed from the date on which the application was filed with the State, including any assertion that such application was incomplete. We find this measured, case-specific approach is appropriate because such a determination will be informed by the specific facts presented in any given proceeding including, as applicable, State-specific laws and regulations.

14. Moreover, we note that in Order No. 1977 the Commission declined to adopt the NOPR proposal to allow simultaneous processing.²⁴ This proposal would have allowed the Commission's pre-filing process to begin once an application had been filed with the State.²⁵ In declining to adopt simultaneous processing, the Commission continues to recognize the States' primacy in transmission siting and afford States one full year to process an application without any overlapping Commission processes.²⁶ An applicant may request to begin the Commission's pre-filing process only after that year has passed.

B. State Siting Proceedings

1. Order No. 1977

15. Section 50.6(e) requires an application to provide evidence demonstrating that one of the jurisdictional bases set forth in FPA

section 216(b)(1) applies to the proposed facilities. In addition, § 50.6(f) provides that an application must also demonstrate that the proposed facilities meet the statutory criteria in FPA sections 216(b)(2) through (6), including, among other things, that the proposal is consistent with the public interest.

16. In Order No. 1977, the Commission adopted revisions to § 50.6(e) for consistency with the IJA's amendments to FPA section 216(b)(1).²⁷ The IJA did not amend the criteria in section 216(b)(2) through (6). Therefore, Order No. 1977 did not revise § 50.6(f). In response to comments on the NOPR, the Commission declined to adopt a requirement that an applicant file with the Commission all comments submitted in a relevant State siting proceeding.²⁸

2. Requests for Rehearing

17. Louisiana Commission seeks rehearing of Order No. 1977, arguing that the final rule intrudes on State authority and fails to require consideration of a State's siting decision and the associated evidentiary record.²⁹ It asserts that a State's decision on a siting application is deserving of deference and should be presumed correct, with the burden of proof on the applicant in the Federal proceeding to overcome that presumption.³⁰ Louisiana Commission urges the Commission to defer, or at least consider and afford great weight, to a State's findings.³¹

18. Public Interest Organizations assert that the Commission should incorporate all public comments in the State permitting docket into the administrative record for any subsequent Federal permitting proceeding.³² They contend that comments in State permitting processes are generally public and incorporating them in the Commission's docket, even absent explicit permission, will not harm commenters' interests.³³ Rather, Public Interest Organizations note that this practice would benefit commenters by eliminating the "procedural trap" of requiring commenters in a State proceeding to resubmit any input to the Commission.³⁴ They also posit that incorporating all comments filed at the State level would help ensure that the

Commission has a full administrative record containing all information relevant to the State's decision and that the Commission's permit decision is legally defensible.³⁵

3. Commission Determination

19. The Commission has previously stated that in reviewing a request for a permit to site electric transmission facilities it will consider the record in its entirety, including any information filed regarding actions or findings made in the State proceeding.³⁶ We reaffirm that commitment here. Nevertheless, we note that, although the Commission will consider the outcome and relevant findings of State siting decisions, the State's decision is not determinative under the section 216 framework. If the Commission finds that the statutory criteria under section 216(b) have been met, it may issue a permit to construct or modify electric transmission facilities in a National Corridor notwithstanding a State's denial of the same.³⁷ The Commission's consideration, as described in the final rule, of whether an application meets the statutory criteria for Commission jurisdiction does not improperly intrude upon State authority.

20. When filings made in a Commission proceeding reference information in a State siting proceeding, to the extent that the Commission may find certain elements of the State siting proceeding useful in its decision-making process, it may request that the applicant file this information in the Commission's record, as needed, on a case-by-case basis.³⁸ We continue to find that incorporating the State record in its entirety into the Commission's record would require the submission and review of information that may not be relevant to the Commission proceeding.³⁹

21. We disagree that we are creating a "procedural trap" or imperiling the legal defensibility of our orders by declining to mandate that all comments in the State proceeding be filed in the Commission's docket. The commencement of the pre-filing process and the filing of an application are both milestones that trigger requirements that an applicant notify stakeholders. These requirements are intended to encourage stakeholder participation and disseminate information about the proposed project and about how to

²³ Order No. 689 Rehearing, 119 FERC ¶ 61,154 at P 34.

²⁴ Order No. 1977, 187 FERC ¶ 61,069 at PP 53–54.

²⁵ See *id.* PP 53–54.

²⁶ See *id.* P 40.

²⁷ *Id.* P 33.

²⁸ *Id.* P 216.

²⁹ Louisiana Commission Rehearing Request at 5, 7–8.

³⁰ *Id.* at 8.

³¹ *Id.*

³² Public Interest Organizations Rehearing Request at 23–34.

³³ *Id.* at 23.

³⁴ *Id.* at 24.

³⁵ *Id.*

³⁶ Order No. 689 Rehearing, 119 FERC ¶ 61,154 at P 4.

³⁷ 16 U.S.C. 824p(b)(1)(C)(iii).

³⁸ Order No. 1977, 187 FERC ¶ 61,069 at P 256.

³⁹ *Id.*

participate in the Commission's pre-filing and application processes. In particular, applicants must make a good faith effort to notify, among other stakeholders, any known individuals or organizations that have expressed an interest in the State siting proceeding.⁴⁰ In addition, the applicant's Pre-filing Notification must explain that the Commission's pre-filing and application processes are separate from any ongoing State siting proceeding and describe the status of any such State siting proceeding.⁴¹ We believe these provisions are sufficient to ensure that stakeholders are made aware of the Commission's separate proceeding and how to participate in it, and that stakeholders can then decide whether to file with the Commission information that they have provided to the State.

22. Moreover, as previously noted, in Order No. 1977 the Commission declined to adopt the NOPR proposal to allow simultaneous processing.⁴² This means that, in cases where the Commission's jurisdiction rests on the pendency of a State's siting determination (*i.e.*, FPA section 216(b)(1)(C)(i)), the pre-filing process will not begin until at least one year after applications have been filed with the relevant States.⁴³ The one-year delay between initiation of the State and Federal processes increases the possibility that comments filed in the State siting proceeding may contain outdated information or may not fully reflect the filer's views with respect to the subsequent Commission proceeding. For these reasons, we continue to find it unnecessary to impose a generic requirement that all comments filed in a State siting proceeding should be incorporated into any subsequent Commission proceeding. This does not preclude interested parties from submitting for the Commission's consideration information from the State proceeding.

C. Applicant Code of Conduct Applicability

1. Order No. 1977

23. Section 216(e)(1) of the FPA, as amended by the IJJA, requires the Commission to determine, as a prerequisite to a permit holder receiving eminent domain authority, that the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process.⁴⁴ In

Order No. 1977, the Commission adopted an Applicant Code of Conduct as one way that an applicant may demonstrate that it has made good faith efforts to engage with landowners.⁴⁵ The Commission further explained that an applicant may choose an alternative method of demonstrating that it meets the good faith efforts standard, so long as it explains how its alternative method is equal to or better than compliance with the Applicant Code of Conduct.⁴⁶ In response to comments about the statute's requirement to make good faith efforts to engage with "other stakeholders" in addition to landowners, Order No. 1977 explained that applicants will bear the burden of demonstrating good faith efforts to engage with stakeholders other than landowners and that the Commission will evaluate these efforts on a case-by-case basis, based on the record in each individual proceeding.⁴⁷

2. Rehearing Requests

24. First, Public Interest Organizations contend that the Commission erred by not extending the Applicant Code of Conduct to all stakeholders or, in the alternative, by not adding to the regulations a requirement that applicants demonstrate that they have made good faith efforts to engage with other stakeholders.⁴⁸ To comply with the FPA's good faith efforts requirement, Public Interest Organizations argue that the Applicant Code of Conduct must be applied to all landowners and other stakeholders.⁴⁹ They generally argue this would provide a clear path for applicants to satisfy the statutory requirement and that many of the provisions in the Applicant Code of Conduct are not landowner-specific and apply equally to all stakeholders (*e.g.*, maintaining a discussion log; ensuring communications are factually correct and respectful; avoiding harassing, coercive, manipulative, or intimidating communications or high-pressure tactics).⁵⁰ In the alternative, Public Interest Organizations argue that the Commission must revise its regulations to make clear that the applicant must engage in good faith with all stakeholders.⁵¹

25. Second, Public Interest Organizations assert that if the Applicant Code of Conduct is not

extended to all stakeholders it should, at a minimum, apply to an applicant's engagement with Indian Tribes.⁵² Citing that the Commission's reasoning for limiting applicability of the Code of Conduct is to protect landowners whose property may be used or acquired, Public Interest Organizations note that "these same early-in-the-process protections of honest dealings, consent to enter lands, and documentation of engagement are also necessary to protect Tribes whose remaining resources may be affected, particularly on reservations or lands otherwise held by a Tribe, as well as on Tribes' ancestral lands."⁵³

26. Third, Public Interest Organizations urge the Commission to clarify two statements in Order No. 1977's preamble regarding Tribal land ownership. They ask the Commission to recognize that Tribes: (1) meet the Commission's definition of "affected landowners" regardless of whether their land is held in fee or in trust,⁵⁴ and (2) retain their sovereign right to exclude nonmembers from reservation land, regardless of the applicability of the Applicant Code of Conduct.⁵⁵

3. Commission Determination

27. Order No. 1977 did not err by adopting an Applicant Code of Conduct that focuses on an applicant's engagement with affected landowners. As the Commission previously explained, the Applicant Code of Conduct specifies recordkeeping and information-sharing requirements that are tailored to encourage productive and more sustained engagement with affected landowners regarding the use or acquisition of their property.⁵⁶ The interests of other individual stakeholders may vary in timing and scope, and the amount and type of engagement with each stakeholder will need to be adapted to case-specific circumstances. We continue to find that the most appropriate way to determine whether an applicant has made good faith efforts to engage with other stakeholders is based on the record in each individual proceeding. As the Commission previously explained, the burden is on the applicant to show that the good faith efforts standard is met with respect to stakeholders.⁵⁷ In evaluating whether this showing is met, we will consider, among other things, an applicant's efforts to engage stakeholders as described in the Project

⁴⁰ 18 CFR 50.4(c)(1).

⁴¹ *Id.* § 50.4(c)(2)(i)(H).

⁴² Order No. 1977, 187 FERC ¶ 61,069 at P 53.

⁴³ *Id.* P 54.

⁴⁴ 16 U.S.C. 824p(e)(1).

⁴⁵ Order No. 1977, 187 FERC ¶ 61,069 at PP 73–74.

⁴⁶ *Id.* P 82.

⁴⁷ *Id.* P 84.

⁴⁸ Public Interest Organizations Rehearing Request at 2.

⁴⁹ *Id.* at 2–6.

⁵⁰ *Id.* at 5–6.

⁵¹ *Id.* at 7–8.

⁵² *See id.* at 8–16.

⁵³ *Id.* at 10.

⁵⁴ *Id.* at 12–15.

⁵⁵ *Id.* at 15–16.

⁵⁶ Order No. 1977, 187 FERC ¶ 61,069 at P 84.

⁵⁷ *Id.*

Participation Plan (including engagement with environmental justice communities and Tribes) and monthly status reports filed during pre-filing, as well as compliance with project notification requirements.⁵⁸ The Commission will also consider other record information, such as comments filed by stakeholders.

28. The Commission has explained that it will make this determination at the time it renders a decision on a permit application.⁵⁹ We intend to evaluate an applicant's engagement with affected landowners based on compliance with the Applicant Code of Conduct, or an alternative method, and an applicant's engagement with other stakeholders based on the record in the proceeding. This approach will provide the Commission with sufficient information to determine whether an applicant has made good faith efforts, and the Commission did not err by declining to either adopt specific criteria or regulatory text reiterating the statutory obligation with respect to other stakeholders.⁶⁰

29. As to Public Interest Organizations' second argument, we similarly find that Order No. 1977 did not err by declining to extend the Applicant Code of Conduct to an applicant's engagement with Tribes. As noted above, we think it appropriate that the Applicant Code of Conduct focuses on affected landowners whose property is most likely to be affected by a proposed project—e.g., property that will be crossed or used, abutting property that may be affected by minor adjustments to the route or project facilities, or property containing residences in close proximity to construction areas—and whose property may be subject to eminent domain. Section 216(e) authorizes a permit holder to use eminent domain to acquire the necessary right-of-way to construct, operate, and maintain transmission facilities. But section 216(e)(1) expressly excludes property owned by the United States from the type of property that can be acquired by eminent domain, and Tribal reservation or trust lands are owned by the United States and held in trust for the benefit of Tribes. Therefore, an applicant may not acquire rights-of-way across these lands using eminent domain under section 216(e). Rather, an applicant must apply to the U.S. Department of the Interior's Bureau of

Indian Affairs (BIA) for right-of-way authorization to cross Tribal land and comply with the relevant BIA regulations.⁶¹

30. Nevertheless, due to the unique and complex nature of Tribal land ownership, we are modifying the Tribal Engagement Plan to add requirements that will apply if rights-of-way on land owned in trust or restricted status must be obtained for a proposed project.⁶² Specifically, if a proposed project will require this type of right-of-way authorization, the Tribal Engagement Plan must describe how the applicant will engage with the relevant Indian Tribe or individual Indian landowners to obtain the necessary permissions, including consent to access Tribal land to prepare information required by the application (e.g., to survey), if applicable, and ensure that communications with Indian Tribes are honest, factually accurate, and respectful of Tribal sovereignty. These additional requirements, if applicable, will apply to all applicants regardless of whether they choose to comply with the Applicant Code of Conduct.⁶³ We clarify that the definition of affected landowner does not specifically encompass Indian Tribes or individual Indian landowners located on Tribal reservations or trust lands owned by the United States and held in trust for the benefit of Tribes.

31. Finally, in response to Public Interest Organizations' request, we clarify a statement in Order No. 1977's preamble regarding the need to obtain consent to enter Tribal lands. The statement was in reference to applicability of a specific provision of the Applicant Code of Conduct that requires an applicant to obtain an affected landowner's permission prior to

accessing their property to survey.⁶⁴ We recognize and clarify that a Tribe's right to exclude, or condition the presence of, nonmembers on Tribal lands is well-established.⁶⁵ Nothing in Order No. 1977, as revised herein, is intended to or can infringe upon Tribal sovereignty.

D. Landowner Bill of Rights

1. Order No. 1977

32. In Order No. 1977, the Commission adopted a new project notification requirement to ensure that any Pre-filing Notification that an applicant mails to an affected landowner include a copy of a Commission document titled "Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings" (Landowner Bill of Rights).⁶⁶ The Commission explained that requiring applicants to provide this document at the outset of the permitting process would help ensure that affected landowners are informed of their rights in dealings with the applicant, in Commission proceedings, and in eminent domain proceedings.⁶⁷

2. Rehearing Requests

33. Pennsylvania Commission argues that the Commission's decision to require its Landowner Bill of Rights was arbitrary and capricious, an abuse of discretion, and not reasoned decision-making.⁶⁸ Pennsylvania Commission asserts that the Commission failed to consider Pennsylvania Commission's proffered alternative that the Commission endorse State-designed Landowner Bill of Rights for those States willing to engage with the Commission on the contents of the document.⁶⁹ It also faults the

⁶¹ It appears that BIA regulations require an applicant for right-of-way authorization to obtain consent from the Tribe or individual Indian landowner. See 25 CFR 169.107.

⁶² BIA's regulations provide that "trust or restricted status" means: "(1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes and/or individual Indians; or (2) That one or more tribes and/or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law." 25 CFR 169.2.

⁶³ As in the final rule, we note that the Tribal Engagement Plan does not affect and is separate from the Commission's consultation practices under its Tribal Consultation Policy, as well as existing trust responsibilities and government-to-government relationships with Tribes. *Pol'y Statement on Consultation with Indian Tribes in Comm'n Procs.*, Order No. 635, 104 FERC ¶ 61,108 (2003), revised, Order No. 863, 169 FERC ¶ 61,036 (2019). The Tribal Consultation Policy is codified at 18 CFR 2.1c. The Commission also has separate responsibilities to consult with Tribes under section 106 of the National Historic Preservation Act.

⁶⁴ See Order No. 1977, 187 FERC ¶ 61,069 at P 94 ("Regarding Tribal concerns for obtaining consent to enter Tribal lands, we clarify that the Applicant Code of Conduct would apply to land owned in fee by a Tribe or member of a Tribe, so § 50.12(a)(9) would require approval from the Tribe or member of a Tribe under those circumstances.").

⁶⁵ See, e.g., *State of Montana v. U.S.*, 450 U.S. 544, 557 (1981) (Tribe may prohibit nonmembers from hunting or fishing on land belonging to the Tribe or held by the United States in trust for the Tribe or it may place conditions upon their entry upon the same); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144 (1982) ("Nonmembers who lawfully enter tribal lands remain subject to the tribe's power to exclude them. This power necessarily includes the lesser power to place conditions on entry, on continued presence, or on reservation conduct, such as a tax on business activities conducted on the reservation.").

⁶⁶ Order No. 1977, 187 FERC ¶ 61,069 at P 202 & app. A (providing final version of the Landowner Bill of Rights).

⁶⁷ *Id.* P 196.

⁶⁸ Pennsylvania Commission Rehearing Request at 2.

⁶⁹ *Id.* at 4.

⁵⁸ *Id.*

⁵⁹ *Id.* P 78.

⁶⁰ We note that, to the extent relevant, nothing precludes applicants from applying generic principles of good faith engagement from the Applicant Code of Conduct to interactions with other stakeholders.

Commission-developed Landowner Bill of Rights because it does not mention State siting jurisdiction and gives the impression that Federal permit applications are the only proceedings that matter.⁷⁰

3. Commission Determination

34. In Order No. 1977, the Commission considered and ultimately disagreed with Pennsylvania Commission's recommendation that modifications to the Landowner Bill of Rights, including State-designed versions of the document, should be permissible.⁷¹ The Commission explained that the purpose of requiring applicants to provide the Landowner Bill of Rights with the Pre-filing Notification is to ensure that affected landowners are informed in a consistent manner of their rights. Allowing applicants to modify or develop their own version of the Landowner Bill of Rights, even with State input, could result in uncertainty and confusion.⁷² We continue to find that to be the case. Endorsing various, potentially conflicting, documents that are specific to each State would be a confusing and inefficient approach. Requiring applicants to provide affected landowners with a copy of the Landowner Bill of Rights—a generic document developed by the Commission and intended to provide information about the Federal permitting process in a broad and consistent manner—does not preclude an applicant from providing additional information to landowners about additional rights under State law or ongoing State siting proceedings, if applicable.

E. Climate Impacts Analysis Under NEPA

1. Order No. 1977

35. In Order No. 1977, the Commission adopted a new environmental resource report that requires an applicant to provide information on proposed transmission facilities' impacts on air quality and environmental noise.⁷³ As relevant here, the *Air quality and environmental noise* resource report requires an applicant to estimate emissions from the proposed project and the corresponding impacts on air quality and the environment. Specifically, the report must disclose the reasonably foreseeable emissions from construction, operation, and

maintenance of the project facilities; compare those emissions with applicable General Conformity thresholds for each designated nonattainment or maintenance area; identify the corresponding impacts on communities and the environment in the project area; and describe any proposed mitigation measures to control emissions.⁷⁴

2. Rehearing Requests

36. Public Interest Organizations assert that the Commission must require a more rigorous analysis of electric transmission projects' climate impacts under NEPA.⁷⁵ They generally argue that the final rule's failure to explicitly require applicants to analyze climate impacts is out of step with recent legal developments, including the Fiscal Responsibility Act of 2023,⁷⁶ the Council on Environmental Quality's (CEQ) Phase 2 final rule,⁷⁷ and DOE's section 216(h) rule.⁷⁸ Public Interest Organizations urge the Commission to adopt relevant language from DOE's regulations and require applicants to "[e]stimate the reasonably foreseeable change in greenhouse gas emissions from the existing, proposed, and reasonably foreseeable generation resources . . . that may connect to the proposed project or interconnect as a result of the proposed project."⁷⁹

⁷⁴ *Id.* P 371; 89 FR 46682, 46738 (to be codified at 18 CFR 380.16(m)(3)(i)–(iv)).

⁷⁵ Public Interest Organizations Rehearing Request at 16–22.

⁷⁶ Enacted on June 3, 2023, the Fiscal Responsibility Act includes a section titled "Builder Act," which amended NEPA in several ways. See FISCAL RESPONSIBILITY ACT OF 2023, Public Law 118–5, 137 Stat 10, § 321 (providing the "Builder Act").

⁷⁷ On May 1, 2024, CEQ published its Phase 2 final rule revising its regulations implementing NEPA, including to implement the Builder Act amendments. CEQ, National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 FR 35442 (May 1, 2024). CEQ's Phase 2 final rule became effective on July 1, 2024, and agencies have 12 months from the effective date to develop or revise proposed procedures to implement CEQ's revised regulations.

⁷⁸ Public Interest Organizations Rehearing Request at 17. On May 1, 2024, DOE issued a final rule revising its regulations under section 216(h) of the FPA to establish a Coordinated Interagency Transmission Authorizations and Permits (CITAP) Program for coordinating the Federal authorization and environmental review process for electric transmission facilities. See DOE, Coordination of Federal Authorizations for Electric Transmission Facilities, 89 FR 35312 (May 1, 2024) (DOE CITAP Final Rule). We note that, pursuant to Delegation Order No. S1–DEL–FERC–2006, DOE delegated to the Commission the responsibility for coordinating the Federal authorization and environmental review process for electric transmission facilities seeking a permit under FPA section 216(b).

⁷⁹ Public Interest Organizations Rehearing Request at 21 (quoting CITAP Final Rule, 89 FR at 35378).

3. Commission Determination

37. We disagree with Public Interest Organizations' contention that the final rule does not ensure a rigorous analysis of electric transmission projects' climate impacts. The Commission's regulations describe the generally applicable information that permit applications must include. These are minimum filing requirements with which each application must comply. In addition, each project will raise unique issues that will need to be considered on a case-by-case basis. In Order No. 1977, the Commission adopted regulations requiring applicants to estimate a proposed project's emissions and the corresponding impacts on air quality and the environment. Although the regulations are broad, greenhouse gases are considered air pollutants by the Environmental Protection Agency and estimates of such emissions should be included in the *Air quality and environmental noise* resource report if they are reasonably foreseeable, along with associated climate impacts.

38. Public Interest Organizations' concern that an applicant's analysis will be incongruous with new statutory and regulatory authority directing consideration of climate impacts under NEPA is misplaced. It is the Commission's obligation to ensure that its environmental analysis complies with the most current requirements under NEPA. And it is the Commission's responsibility to obtain any additional information needed to ensure such compliance. The Commission's required resource reports are intended to support the Commission's environmental review and NEPA obligations but cannot be exhaustive of all environmental matters that may arise in a proceeding that the Commission may need to address. The Commission will determine on a case-by-case basis whether additional information is needed to analyze the proposed project's reasonably foreseeable effects. This approach is reasonable where, as is the case here, determinations regarding the scope and reasonable foreseeability of a proposed project's climate change impacts will be complex, variable, and will turn on the unique facts of each case.

III. Information Collection Statement

39. The Paperwork Reduction Act⁸⁰ requires each Federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information directed to 10 or more persons or

⁷⁰ *Id.* at 5.

⁷¹ See Order No. 1977, 187 FERC ¶ 61,069 at PP 197, 203.

⁷² See *id.* P 203.

⁷³ *Id.* PP 379–386.

⁸⁰ 44 U.S.C. 3501–3521.

contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the **Federal Register**.⁸¹ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

40. **Public Reporting Burden:** On rehearing of Order No. 1977, the Commission is further revising its regulations governing applications for permits to site transmission facilities

under section 216 of the FPA. This order on rehearing modifies certain reporting and recordkeeping requirements included in FERC–729 (OMB Control No. 1902–0238).⁸²

41. Previously, the Commission submitted to OMB the information collection requirements arising from Order No. 1977 and OMB approved those requirements. In this order on rehearing, the Commission makes one substantive change to those requirements. This order on rehearing revises § 50.4(a)(5) to require applicants, under certain circumstances, to provide additional information describing its efforts to engage with Tribes. Specifically, if a right-of-way on Tribal lands must be obtained for a proposed

project, the Tribal Engagement Plan must describe how the applicant will engage with the relevant Indian Tribe or individual Indian landowners to obtain the necessary permissions, including consent to access Tribal land to prepare information required by the application (e.g., to survey), if applicable. In addition, the plan must describe how the applicant will ensure communications with Indian Tribes are honest, factually accurate, and respectful of Tribal sovereignty. Accordingly, there is a slight increase in the reporting requirements and burden for FERC–729.

42. The estimated burden and cost for the requirements contained in this order on rehearing follow.

ANNUAL CHANGES RESULTING FROM ORDER ON REHEARING IN DOCKET NO. RM22–7–001

	Number of respondents	Number of responses ⁸³ per respondent	Total number of responses	Avg. burden hrs. & cost per response ⁸⁴	Total annual burden hours & total annual cost
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = 5
Tribal Engagement Plan	1	1	1	27 hrs.; \$2,700	27 hrs.; \$2,700.

The final rule estimated the burden and cost for the Tribal Engagement Plan to be 24 hours and \$2,400. In this order on rehearing, we are requiring applicants to provide additional information in the Tribal Engagement Plan if the proposed transmission facilities will cross Tribal lands. We estimate that this will result in an increase of three burden hours. Therefore, we estimate that the total burden and cost for the Tribal Engagement Plan, as revised herein, to be 27 hours and \$2,700. No other information collection requirements contained in Order No. 1977 are affected by this order on rehearing.

43. **Title:** FERC–729—*Electric Transmission Facilities*.

44. **Action:** Revision of information collection FERC–729 in accordance with Docket No. RM22–7–001.

45. **OMB Control No.:** 1902–0238 (FERC–729).

46. **Respondents:** Entities proposing to construct electric transmission facilities pursuant to the Commission’s authority under section 216 of the FPA.

47. **Frequency of Information Collection:** Ongoing.

48. **Necessity of Information:** The new information collection requirements in this order on rehearing are necessary for the Commission to carry out its

responsibilities under the FPA, as amended by the IJA, and NEPA. The required information would enable the Commission to review the features of the proposed project and determine whether the proposed project meets the statutory criteria enumerated in section 216(b) of the FPA as well as evaluate whether an applicant has made good faith efforts to engage with affected landowners and other stakeholders.

49. **Internal Review:** The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission’s need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

50. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Kayla Williams, Office of the Executive Director], by email to DataClearance@ferc.gov or by phone (202) 502–6468.

51. Comments concerning the collection of information and the

associated burden estimates may also be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: oira_submission@omb.eop.gov. Comments submitted to OMB should refer to FERC–729 (OMB Control No. 1902–0238). Copies of the comments can be sent to the Commission (identified by Docket No. RM22–7–001 and the specific FERC collection number (FERC–729) electronically through <https://www.ferc.gov>. For those unable to file electronically, comment copies may be filed by USPS mail or by hand (including courier) delivery: Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Or hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

IV. Environmental Analysis

52. The Commission is required to prepare an environmental assessment or

⁸¹ See 5 CFR 1320.12.

⁸² FERC–729 includes the reporting and recordkeeping requirements for “Electric Transmission Facilities.”

⁸³ We consider the filing of an application, including the mandatory pre-filing information, to be a “response.”

⁸⁴ The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$100 per Hour = Average Cost per

Response. The hourly cost figure is the FY2024 FERC average annual salary plus benefits (\$207,786/year or \$100/hour). Commission staff estimates that industry costs for salary plus benefits are similar to Commission costs.

an environmental impact statement for any action that may have a significant effect on the human environment.⁸⁵ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment, including the promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.⁸⁶ Because the final rule promulgated by Order No. 1977, and revised herein, falls within this categorical exclusion, preparation of an environmental assessment or an environmental impact statement is not required.

V. Regulatory Flexibility Act

53. The Regulatory Flexibility Act of 1980 (RFA)⁸⁷ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small entities.⁸⁸ In lieu of preparing a regulatory flexibility analysis, an agency may certify that a final rule will not have a significant economic impact on a substantial number of small entities.⁸⁹

54. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.⁹⁰ The SBA size standard for electric utilities is based on the number of employees, including affiliates.⁹¹ Under SBA's size standards, a transmission owner covered under the category of Electric Bulk Power Transmission and Control (NAICS code 221121)⁹² is small if, including its affiliates, it employs 500 or fewer people.⁹³

55. In Order No. 1977, the Commission, pursuant to RFA section 605(b), certified that the final rule would not have a significant economic

impact on a substantial number of small entities.⁹⁴ This order on rehearing does not disturb that conclusion. For the same reasons cited in Order No. 1977,⁹⁵ we continue to find that the final rule, as revised herein, would not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

56. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>).

57. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

58. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date

59. These regulations are effective November 22, 2024.

List of Subjects in 18 CFR Part 50

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

By the Commission.

Issued: October 17, 2024.

Debbie-Anne A. Reese,
Secretary.

In consideration of the foregoing, the Commission amends part 50, chapter I, title 18, Code of Federal Regulations, as follows:

PART 50—APPLICATIONS FOR PERMITS TO SITE INTERSTATE ELECTRIC TRANSMISSION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 16 U.S.C. 824p; DOE Delegation Order No. S1-DEL-FERC-2006.

■ 2. Amend § 50.4 by revising paragraph (a)(5) to read as follows:

§ 50.4 Stakeholder participation.

* * * * *

(a) * * *

(5) Includes a Tribal Engagement Plan that addresses all targeted outreach to identified Indian Tribes. This plan must summarize comments received from potentially affected Indian Tribes during any previous outreach activities and describe planned targeted outreach activities with such Tribes during the pre-filing process and after the filing of an application. This plan must also describe how the applicant will engage Indian Tribes about any potential mitigation measures. If rights-of-way over or across land owned in trust or restricted status must be obtained, this plan must describe how the applicant will engage with the relevant Indian Tribe or individual Indian landowners to obtain the necessary permissions, including consent to access Tribal land to prepare information required by the application (e.g., to survey), if applicable, and ensure communications with Indian Tribes are honest, factually accurate, and respectful of Tribal sovereignty.

* * * * *

[FR Doc. 2024-24526 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 588

Publication of Western Balkans Stabilization Regulations Web General Licenses 3A, 4, and 5

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Western Balkans Stabilization Regulations: GLs 3A, 4, and 5, each of which was previously made available on OFAC's website.

DATES: GLs 3A, 4, and 5 were issued on June 18, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or

⁸⁵ *Reguls. Implementing the Nat'l Envtl. Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

⁸⁶ 18 CFR 380.4(a)(2)(ii).

⁸⁷ 5 U.S.C. 601-612.

⁸⁸ *Id.* 603(c).

⁸⁹ *Id.* 605(b).

⁹⁰ 13 CFR 121.101.

⁹¹ *Id.* 121.201.

⁹² The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System*, <https://www.census.gov/eos/www/naics/>.

⁹³ 13 CFR 121.201 (Sector 22—Utilities).

⁹⁴ Order No. 1977, 187 FERC ¶ 61,069 at PP 427-430.

⁹⁵ *See id.*

Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Background

On June 18, 2024, OFAC issued GLs 3A, 4, and 5 to authorize certain transactions otherwise prohibited by the Western Balkans Stabilization Regulations, 31 CFR part 588. GL 3A superseded GL 3, which was issued on November 16, 2023. Each GL was made available on OFAC's website (www.treas.gov/ofac) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Western Balkans Stabilization Regulations

31 CFR Part 588

GENERAL LICENSE NO. 3A

Authorizing Certain Transactions Related to Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, Software Updates, or Medical Prevention, Diagnosis, or Treatment, or Clinical Trials Involving Certain Blocked Entities

(a) Except as provided in paragraph (d) of this general license, all transactions prohibited by the Western Balkans Stabilization Regulations, 31 CFR part 588 (WBSR), involving one or more of the blocked entities described in paragraph (b) related to the following are authorized: (1) the production, manufacturing, sale, transport, or provision of agricultural commodities, agricultural equipment, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices; (2) the prevention, diagnosis, or treatment of any disease or medical condition; or (3) the conduct of clinical trials or other medical research.

(b) The authorization in paragraph (a) of this general license applies to the following blocked entities:

- (1) Orka Holding AD;
- (2) Infinity International Group d.o.o. Banja Luka;
- (3) Sirius 2010 d.o.o. Banja Luka; or
- (4) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the

aggregate, a 50 percent or greater interest.

(c) For the purposes of this general license, agricultural commodities, medicine, and medical devices are defined as follows:

(1) *Agricultural commodities.* Agricultural commodities are products that fall within the term "agricultural commodity" as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602) and are intended for use as:

- (i) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);
- (ii) Seeds for food crops;
- (iii) Fertilizers or organic fertilizers; or
- (iv) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* Medicine is an item that falls within the definition of the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) *Medical devices.* A medical device is an item that falls within the definition of "device" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(d) This general license does not authorize any transactions otherwise prohibited by the WBSR, including transactions involving any person blocked pursuant to the WBSR other than the blocked persons described in paragraph (b) of this general license, unless separately authorized.

(e) Effective June 18, 2024, General License No. 3, dated November 16, 2023, is replaced and superseded in its entirety by this General License No. 3A.

Note to General License No. 3A. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies.

Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: June 18, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Western Balkans Stabilization Regulations

31 CFR Part 588

GENERAL LICENSE NO. 4

Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on June 18, 2024

- (a) Except as provided in paragraph
- (b) of this general license, all

transactions prohibited by the Western Balkans Stabilization Regulations, 31 CFR part 588 (WBSR), that are ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked entities are authorized through 12:01 a.m. eastern daylight time, August 17, 2024, provided that any payment to a blocked person is made into a blocked account in accordance with the WBSR:

(1) Infinity International Group d.o.o. Banja Luka;

(2) Sirius 2010 d.o.o. Banja Luka; or

(3) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize any transactions otherwise prohibited by the WBSR, including transactions involving any person blocked pursuant to the WBSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: June 18, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Western Balkans Stabilization Regulations

31 CFR Part 588

GENERAL LICENSE NO. 5

Authorizing Certain Transactions Involving Pumps Manufactured or Distributed by Kaldera Company EL PGP d.o.o. for the Treatment or Distribution of Drinking Water

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Western Balkans Stabilization Regulations, 31 CFR part 588 (WBSR), that are ordinarily incident and necessary to the manufacture, distribution, operation, installation, or maintenance and repair of pumps manufactured or distributed by Kaldera Company EL PGP d.o.o., or any entity in which Kaldera Company EL PGP d.o.o. owns, directly or indirectly, a 50 percent or greater interest, that are currently or are intended solely for use in the treatment or distribution of drinking water, are authorized.

(b) This general license does not authorize any transactions otherwise prohibited by the WBSR, including transactions involving any person blocked pursuant to the WBSR other

than the blocked persons described in paragraph (a) of this general license, unless separately authorized.
Bradley T. Smith,
Director, Office of Foreign Assets Control.

Dated: June 18, 2024.
Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.
[FR Doc. 2024–24524 Filed 10–22–24; 8:45 am]
BILLING CODE 4810–AL–P

Proposed Rules

Federal Register

Vol. 89, No. 205

Wednesday, October 23, 2024

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM25–2–000]

Supplemental Review of the Oil Pipeline Index Level

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend the index level used to determine annual changes to oil pipeline rate ceilings following the decision of the United States Court of Appeals for the District of Columbia Circuit in *Liquid Energy Pipeline Association v. FERC*. In place of the index level established by order issued December 17, 2020, in Docket No. RM20–14–000, the Commission proposes to use the Producer Price Index for Finished Goods (PPI–FG) minus 0.21% as the prospective index level for the remainder of the five-year period that began July 1, 2021. The Commission invites interested persons to submit comments regarding this proposal.

DATES: Initial comments are due November 26, 2024. Reply comments are due December 20, 2024.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through <http://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

- **Mail via U.S. Postal Service Only:** Addressed to: Federal Energy

Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- **Hand (including courier) delivery:** Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Monil Patel (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8296, Monil.Patel@ferc.gov
 Evan Steiner (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8792, Evan.Steiner@ferc.gov
 Molly Behan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8816, Molly.Behan@ferc.gov

SUPPLEMENTARY INFORMATION:

1. On December 17, 2020, the Commission issued an order in the 2020 five-year review of the oil pipeline index (Initial Order) establishing an index level of Producer Price Index for Finished Goods plus 0.78% (PPI–FG+0.78%) for the five-year period beginning July 1, 2021 (Initial Index).¹ On January 20, 2022, the Commission issued an order granting rehearing (Rehearing Order) and establishing an index level of PPI–FG–0.21% (Rehearing Index).² In *Liquid Energy Pipeline Association v. FERC* (*LEPA v. FERC*),³ the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the Commission violated the Administrative Procedure Act (APA) by amending the Initial Index without providing notice and an opportunity to comment. Accordingly, the court vacated the Rehearing Order and ordered the Commission to reinstate the Initial Order.⁴ In compliance with this

directive, the Commission reinstated the Initial Order by order issued September 17, 2024.⁵

2. As discussed below, we remain concerned that the Commission erred in establishing the Initial Index. Thus, following *LEPA v. FERC*, we propose to amend the Initial Index prospectively by adopting a revised index level of PPI–FG–0.21% for the remainder of the five-year period that began on July 1, 2021. We seek comment on this proposal and encourage commenters to address all issues related to the appropriate index level following *LEPA v. FERC*.

I. Background

A. Indexing and the Kahn Methodology

3. The Commission adopted the indexing methodology in compliance with the Energy Policy Act of 1992 (EPA 1992), which required the Commission to streamline its procedures related to oil pipeline rates and establish “a simplified and generally applicable ratemaking methodology for oil pipelines.”⁶ Indexing streamlines and simplifies ratemaking procedures by allowing oil pipelines to change their rates subject to certain ceiling levels, as opposed to making cost-of-service filings. Under this methodology, pipelines may adjust their ceiling levels effective every July 1 by “multiplying the previous index year’s ceiling level by the most recent index published by the Commission.”⁷

4. The Commission reviews the index level every five years.⁸ Beginning with Order No. 561 and in each ensuing five-year review, the Commission has adjusted the index level using the Kahn Methodology, which calculates each

⁵ *Revisions to Oil Pipeline Regs. Pursuant to the Energy Pol’y Act of 1992*, 188 FERC ¶ 61,173 (2024) (Reinstatement Order).

⁶ Public Law No. 102–486, 1801(a), 1802(a), 106 Stat. 2776, 3010 (Oct. 24, 1992) (codified at 42 U.S.C. 712 note).

⁷ 18 CFR 342.3(d)(1). Oil pipelines may adjust their rates to the ceiling levels pursuant to the Commission’s regulations so long as no protest or complaint demonstrates that the index rate change substantially diverges from the pipelines cost changes. *Id.* 343.2(c)(1).

⁸ *Revisions to Oil Pipeline Regs. Pursuant to the Energy Pol’y Act of 1992*, Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,941, 30,947, 30,951 (1993) (cross-referenced at 65 FERC ¶ 61,109), *order on reh’g*, Order No. 561–A, 59 FR 40243 (Aug. 8, 1994), FERC Stats. & Regs. ¶ 31,000, at 31,093, 31,099 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff’d sub nom. Ass’n of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996) (AOPL I).

¹ *Five-Year Rev. of the Oil Pipeline Index*, 173 FERC ¶ 61,245 (2020).

² *Five-Year Rev. of the Oil Pipeline Index*, 178 FERC ¶ 61,078, *reh’g denied*, 179 FERC ¶ 61,100 (2022) (Second Rehearing Order).

³ 109 F.4th 543 (D.C. Cir. 2024).

⁴ *Id.* at 547–49.

pipeline's cost change on a per barrel-mile basis over the prior five-year period based on FERC Form No. 6, page 700 summary cost-of-service data. To remove statistical outliers and spurious data, the Kahn Methodology trims the data set by removing an equal number of pipelines at the top and bottom of the data set. Then, the Kahn Methodology averages the median, mean, and weighted mean to determine a composite central tendency, which is compared to the changing value of PPI-FG over the relevant five-year period. The index level is set at PPI-FG plus (or minus) this differential.

B. 2020 Five-Year Review

5. On June 18, 2020, the Commission initiated the 2020 five-year review.⁹ The Commission proposed to calculate the index level by (1) trimming the data set to the middle 50% and (2) incorporating the effects of the Commission's 2018 policy change requiring Master Limited Partnership (MLP)-owned pipelines to eliminate the income tax allowance and previously accrued Accumulated Deferred Income Taxes (ADIT) balances from their page 700 summary costs of service (Income Tax Policy Change).¹⁰ Ten commenters filed comments addressing the Commission's proposal.¹¹ LEPA, Designated Carriers, and Kinder Morgan, Inc. (collectively, Pipelines) supported trimming the data set to the middle 80%, rather than the middle 50%, and adjusting the reported page 700 data to eliminate the effects of the Income Tax Policy Change from the index calculation. By contrast, Joint Commenters, Liquids Shippers Group, and CAPP (collectively, Shippers)

argued that the Commission should continue using the middle 50% and reject Pipelines' proposed adjustments to the data set.

6. In the Initial Order, the Commission established the Initial Index of PPI-FG+0.78%.¹² The Commission adopted Pipelines' proposals to use the middle 80% and to remove the effects of the Income Tax Policy Change from the index calculation.¹³ On January 19, 2021, Shippers filed requests for rehearing challenging the Commission's determinations, and Pipelines requested rehearing or clarification to correct minor errors in the workpapers underlying the Initial Order.

7. In the Rehearing Order, the Commission granted rehearing in part and adopted the Rehearing Index of PPI-FG-0.21%. The Commission granted Shippers' requests to calculate the index level using the middle 50% and unadjusted page 700 data that reflects the effects of the Income Tax Policy Change.¹⁴ The Commission found that the middle 50% produces a more accurate measure of normal pipeline cost changes than the middle 80%, which includes pipelines with extraordinary cost changes that were unrepresentative of ordinary pipeline operations.¹⁵ Furthermore, the Commission found that the index calculation must incorporate the Income Tax Policy Change to produce just and reasonable rates.¹⁶ The Commission also granted Pipelines' request to calculate the index level using updated page 700 data for 2014 where available.¹⁷

8. The Commission directed oil pipelines to recompute their ceiling levels to reflect the Rehearing Index and to reduce their rates in accordance with those ceiling levels effective March 1, 2022.¹⁸ Thereafter, Pipelines filed petitions for review of the Rehearing Order with the D.C. Circuit,¹⁹ and Joint Commenters filed a request for rehearing or clarification, which the

Commission denied by order issued May 6, 2022.²⁰

C. LEPA v. FERC and Reinstatement Order

9. In *LEPA v. FERC*, the D.C. Circuit granted Pipelines' petitions and held that the Commission violated the APA by altering the Initial Index on rehearing without providing additional notice and an opportunity for comment. The court found that the Commission adhered to the APA's notice-and-comment requirements when it adopted the Initial Index.²¹ However, the court explained that once an agency's rule "carrie[s] legal consequences," the APA generally requires the agency to follow notice-and-comment procedures before amending the rule.²² The court found that the Initial Index became "sufficiently final" by July 1, 2021, "to require that any amendment undergo notice-and-comment procedures."²³ Because the Commission amended the Initial Index without engaging in additional notice-and-comment procedures, the court vacated the Rehearing Order and ordered the Commission to reinstate the Initial Order.²⁴

10. On September 17, 2024, the Commission issued an order reinstating the Initial Order in compliance with the court's decision.²⁵

II. Commission Proposal

11. Following the vacatur of the Rehearing Order in *LEPA v. FERC*, we remain concerned that the Initial Order improperly calculated the index level by using the middle 80%, removing the effects of the Income Tax Policy Change, and using outdated page 700 data for 2014 for certain pipelines. Accordingly, we initiate notice-and-comment procedures to consider whether to amend the Initial Index on a prospective basis.²⁶

12. As discussed below, we propose to adopt a revised index level of PPI-FG-0.21% for the remainder of the five-

⁹ *Five-Year Rev. of the Oil Pipeline Index*, 171 FERC ¶ 61,239 (2020) (NOI).

¹⁰ *Id.* PP 9–10; see also *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (Income Tax Policy Statement), *reh'g denied*, 164 FERC ¶ 61,030 (2018), *requests for clarification dismissed*, 168 FERC ¶ 61,136 (2019), *petitions for review dismissed sub nom. Enable Miss. River Transmission, LLC v. FERC*, 820 F. App'x 8 (D.C. Cir. 2020).

¹¹ Comments were filed by: Liquid Energy Pipeline Association (LEPA, formerly known as Association of Oil Pipe Lines or AOPL); Buckeye Partners, L.P., Colonial Pipeline Company, Energy Trasfer LP, Enterprise Products Partners L.P., and Plains All American Pipeline, L.P. (collectively, Designated Carriers); Kinder Morgan, Inc.; Airlines for America, Chevron Products Company, National Propane Gas Association, and Valero Marketing and Supply Company (collectively, Joint Commenters); Apache Corporation Genovus Energy Marketing Services Ltd., ConocoPhillips Company, Devon Gas Services, L.P., Equinor Marketing & Trading US Inc., Fieldwood Energy LLC, Marathon Oil Company, Murphy Exploration and Production Company—USA, Orintiv Marketing Inc., and Pioneer Natural Resources USA, Inc. (collectively, Liquids Shippers Group); Canadian Association of Petroleum Producers (CAPP); Pipeline Safety Trust; Energy Infrastructure Council; and Pipeline and Hazardous Materials Safety Administration.

¹² Initial Order, 173 FERC ¶ 61,245 at P 2.

¹³ *Id.* PP 16–20, 25–32.

¹⁴ Rehearing Order, 178 FERC ¶ 61,023 at PP 16–36, 43–58; see also *id.* PP 64–70, 78–88, 95–98 (denying rehearing regarding issues raised by Liquids Shippers Group and CAPP).

¹⁵ *Id.* PP 46–50.

¹⁶ *Id.* P 17.

¹⁷ *Id.* P 101; see also *id.* P 104 (denying additional proposal raised by Designated Carriers in light of Commission's determination to use unadjusted page 700 data that incorporated effects of Income Tax Policy Change).

¹⁸ *Id.* P 106, ordering para. (B).

¹⁹ Pipelines initially appealed the Rehearing Order to the United States Court of Appeals for the Fifth Circuit (Fifth Circuit). However, in May 2022, the Fifth Circuit transferred the appeals to the D.C. Circuit. *Buckeye Partners, L.P. v. FERC*, No. 22–601000, 2022 WL 1528311 (5th Cir. May 13, 2022).

²⁰ Second Rehearing Order, 179 FERC ¶ 61,100. Joint Commenters filed petitions for review of the Second Rehearing Order in the D.C. Circuit, which were consolidated with Pipelines' petitions for review of the Rehearing Order.

²¹ *LEPA v. FERC*, 109 F.4th at 547.

²² *Id.* at 548 (quoting *Humane Soc'y v. USDA*, 41 F.4th 564, 570 (D.C. Cir. 2022)) (internal quotation marks omitted).

²³ *Id.* at 549.

²⁴ *Id.* The court held that because it was vacating the Rehearing Order, Joint Commenters' challenges to the Second Rehearing Order were moot. *Id.*

²⁵ Reinstatement Order, 188 FERC ¶ 61,173 at P 1. The Commission reinstated the Initial Index after the D.C. Circuit issued the mandate associated with *LEPA v. FERC* on September 17, 2024.

²⁶ See *LEPA v. FERC*, 109 F.4th at 549; see also 49 U.S.C. app. 17(g)(g).

year period that began on July 1, 2021.²⁷ This proposal is based on the Kahn Methodology as applied to page 700 data from 2014–2019 and results from (1) relying solely on the middle 50%, (2) using unadjusted page 700 data that reflects the effects of the Income Tax Policy Change, and (3) using updated page 700 data for 2014, where available. We seek comments on our proposal and encourage commenters to address all issues related to the appropriate index level following *LEPA v. FERC*, including those issues discussed below.²⁸ Commenters should also renew any arguments raised in requests for rehearing or clarification of the Initial Order that they would like for the Commission to consider.

A. Statistical Data Trimming

13. We propose to amend the Initial Index by calculating a revised index level relying solely on the middle 50%. As discussed below, we are concerned that the Commission's use of the middle 80% in the Initial Order departed from established practice and that the record

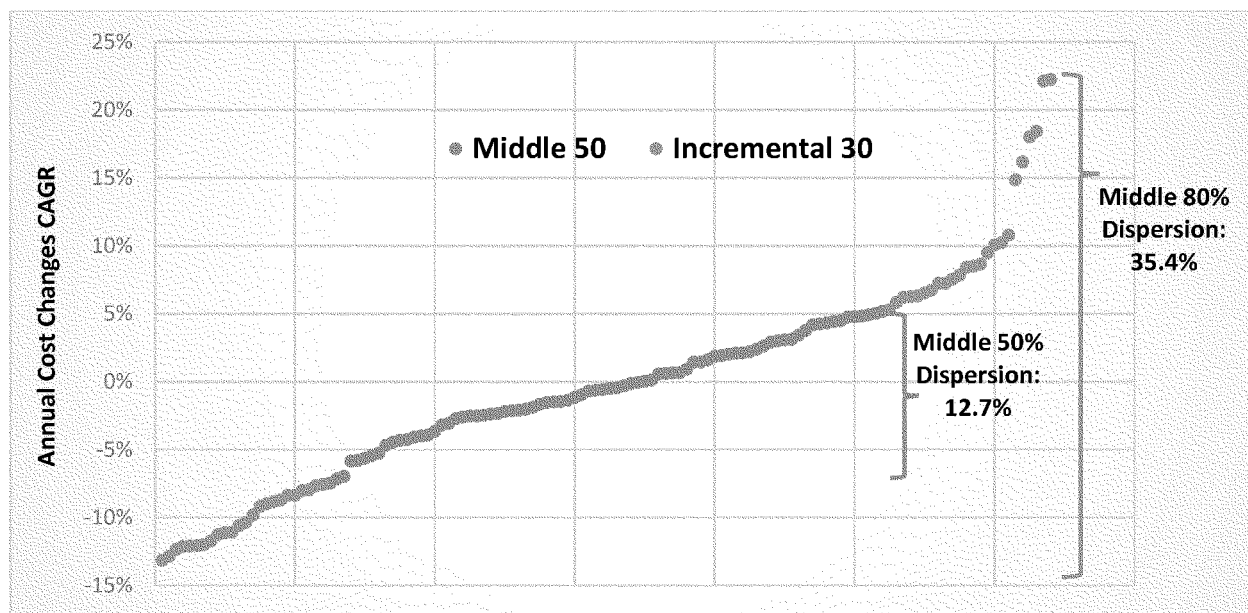
in the 2020 five-year review did not support this change.

14. As an initial matter, the index aims to reflect the cost experience of a typical pipeline during ordinary pipeline operations.²⁹ The index is not designed to recover extraordinary cost changes,³⁰ including those resulting from atypical or idiosyncratic circumstances,³¹ and the presence of extraordinary cost changes in the data set can inflate the index level.³²

15. To avoid inflating the index, the Commission excludes pipelines with extraordinary or idiosyncratic cost changes from its analysis. In the 2010 and 2015 Index Reviews, the Commission found that the middle 50% more appropriately adjusts the index level for normal cost changes than the middle 80%, which, by definition, includes pipelines relatively far removed from the median of the data set.³³ The Commission also concluded that pipelines included in the middle 80% but not the middle 50% (*i.e.*, the incremental 30%) are more likely to have cost changes resulting from

idiosyncratic factors, such as a rate base expansion, plant retirement, or localized changes in supply and demand, that do not reflect normal industry-wide experience.³⁴ Thus, the Commission found that the middle 50%, more effectively than the middle 80%, trims pipelines with anomalous cost changes from the data set while avoiding the complexities and distorting effects of manual data trimming methodologies.³⁵ Following the 2015 Index Review, the D.C. Circuit affirmed the Commission's decision to calculate the index level based solely upon the middle 50%.³⁶

16. As discussed above, in the Initial Order, the Commission departed from its prior practice by using the middle 80%, as opposed to the middle 50%. We are concerned, however, that the page 700 data set for the 2014–2019 period does not support this change. The scatter plot below indicates that the middle 80% in this data set includes several pipelines near its upper bound that differ considerably from the other pipelines in the sample.³⁷



²⁷ This supplemental NOPR applies to the current five-year review period. Consistent with its longstanding practice, the Commission will initiate a separate process for establishing the index level for the five-year period starting July 1, 2026.

²⁸ 5 U.S.C. 553(b)–(c); *see also LEPA v. FERC*, 109 F.4th at 549.

²⁹ *E.g., Five-Year Rev. of Oil Pipeline Pricing Index*, 133 FERC ¶ 61,228, at P 61 (2010) (2010 Index Review), *reh'g denied*, 135 FERC ¶ 61,172 (2011); Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (“The role of an index is to accommodate normal cost changes.”).

³⁰ Extraordinary cost changes are recovered using the Commission's alternate ratemaking methodologies, rather than through indexing. Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (“Extraordinary costs can be recovered through

either of the alternate rate change means—cost of service or settlement rates—as provided in [Order No. 561].”).

³¹ Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097, *aff'd*, AOPL I, 83 F.3d at 1434; *see also* 2010 Index Review, 133 FERC ¶ 61,228 at P 54.

³² Extraordinary cost changes would affect the composite central tendency of the data sample through the weighted mean and unweighted mean, which, unlike the median, reflect the cost experiences of all pipelines in the sample, including those at the upper and lower bounds.

³³ *Five-Year Rev. of the Oil Pipeline Index*, 153 FERC ¶ 61,312, at PP 43–44 (2015) (2015 Index Review), *aff'd sub nom. Ass'n of Oil Pipe Lines v. FERC*, 876 F.3d 336 (D.C. Cir. 2017) (AOPL III); 2010 Index Review, 133 FERC ¶ 61,228 at P 61.

³⁴ 2010 Index Review, 133 FERC ¶ 61,228 at P 61.

³⁵ 2015 Index Review, 153 FERC ¶ 61,312 at P 42 (citing 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63).

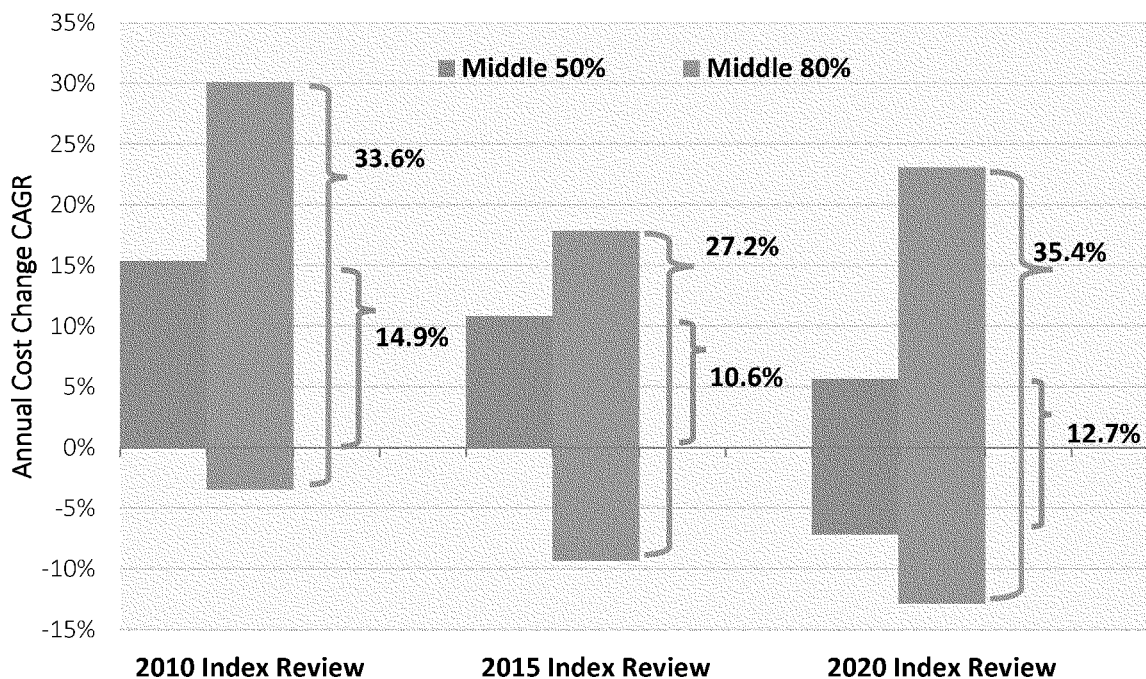
³⁶ AOPL III, 876 F.3d at 342 (stating that the court had “little difficulty in finding that the Commission adequately and reasonably justified its decision not to consider the middle 80[%] of pipelines’ cost-change data” in that proceeding).

³⁷ This scatter plot modifies a similar chart submitted by Joint Commenters in Docket No. RM20–14–000. Joint Commenters Reply Comments, Brattle Group Report at 19, Figure 3 (scatter plot illustrating dispersion of the middle 50% and middle 80% in the unadjusted 2020 data set). The modifications reflect the adjustments proposed herein to the page 700 data set.

17. Moreover, these pipelines, particularly those at the upper bound of the middle 80% range, exert an outsized influence that inflates the index

calculation. The difference between the middle 50% and the middle 80% results primarily from eight pipelines at the upper bound of the middle 80%.³⁸

18. Furthermore, the page 700 data set indicates that the middle 80% is even more dispersed than in 2015 or 2010,³⁹ as illustrated by the bar chart below.⁴⁰



19. In addition, the incremental 30% appears to include pipelines with extraordinary cost changes that are not reflective of ordinary pipeline operations. For example, in the 2020 five-year review, Joint Commenters identified seven pipelines in the incremental 30% whose reported cost changes resulted from irregular circumstances, such as pipeline ruptures or temporary shutdowns.⁴¹

20. Although the Initial Order identified three reasons for using the middle 80% instead of the middle 50%, we no longer find this reasoning persuasive. First, the mere fact that the middle 80% contains more data does not support departing from the middle 50%.⁴² The middle 50% here includes 81% of industry-wide oil pipeline

barrel-miles,⁴³ and thus provides a more representative sample than in 2015 or 2010, when the Commission relied solely on the middle 50%. In particular, the middle 50% in the 2015 and 2010 Index Reviews contained 56% and 76%, respectively of total barrel-miles subject to the index.⁴⁴ Thus, omitting the additional pipelines included in the incremental 30% would not deprive the Commission of a robust data sample. Furthermore, we are concerned that any benefits of considering the larger sample in the middle 80% would not outweigh the risk that this additional data will distort the measurement of normal cost changes.

21. Second, contrary to the Initial Order, it is not clear that using the middle 80% would provide a better

measure of “normal” cost changes in this proceeding.⁴⁵ Rather, as discussed above, the middle 80% appears to include anomalous data that would distort the measurement of the central tendency used to calculate the index level.⁴⁶ This suggests that the more tailored data sample in the middle 50% provides a superior method of measuring normal cost changes, as opposed to extraordinary or idiosyncratic costs.

22. Third, the Initial Order sought to distinguish the 2015 and 2010 Index Reviews on the basis that, unlike in the 2020 review, commenters in those proceedings “presented detailed analyses demonstrating that the incremental 30% contained anomalous cost changes”⁴⁷ However, as in

³⁸ As discussed above, the Kahn Methodology calculates a composite central tendency by averaging the data sample’s median, weighted mean, and unweighted mean. *See supra* P 4. If the top and bottom eight pipelines in the middle 80% are removed from the sample, the composite central tendency would increase by 3 basis points relative to the middle 50%, from -0.21% to -0.18% . By contrast, including the top and bottom eight pipelines in the middle 80% would increase the composite central tendency by an additional 29 basis points, from -0.18% to 0.11% . *See* Attach. A, Ex. 6.

³⁹ When the data sample is highly dispersed, data at the outer bounds of the middle 80% are further removed from the remaining data and thus can have an outsized and distorting effect if used to measure the central tendency.

⁴⁰ The bar chart modifies a similar chart submitted by Joint Commenters in Docket No. RM20–14–000. Joint Commenters Reply Comments, Brattle Group Report at 18, Figure 2 (bar chart illustrating dispersion of middle 50% and middle 80% in 2010, 2015, and the unadjusted 2020 data sets). The modifications reflect the adjustments proposed herein to the page 700 data set.

⁴¹ Joint Commenters Reply Comments, Brattle Group Report at 13–17. For example, MPI Services North America, Inc., reported an inflated 2019 cost of service per barrel-mile due to a temporary shutdown of one of its pipeline segments and Mobil Pipe Line Company experienced a pipeline rupture in 2013 that distorted its 2014 cost-of-service data. *Id.* at 15–17.

⁴² *See* Initial Order, 173 FERC ¶ 61,245 at P 26.

⁴³ *See* attach. A, Ex. 1.

⁴⁴ *See* 2015 Index Review, 153 FERC ¶ 61,312 at P 44 n.85; *id.* at attach. A, Ex. 1; 2010 Index Review, 133 FERC ¶ 61,228 at P 63.

⁴⁵ *See* Initial Order, 173 FERC ¶ 61,245 at P 27.

⁴⁶ The Commission stated in the Initial Order that using the middle 80% is appropriate because the index average will be significantly below the relatively high cost changes at the upper bound. *Id.* PP 27, 32. However, even if the index average is not set at the upper bound of the data sample, including the upper bound of the middle 80% could nonetheless produce an index average inflated by anomalous cost experience. *See* 2010 Index Review, 133 FERC ¶ 61,228 at P 61 (“Using the middle 50[%] ensures that pipelines with relatively large cost increases or decreases do not distort the index.”).

⁴⁷ *See* Initial Order, 173 FERC ¶ 61,245 at P 28.

those prior reviews, the record in the 2020 review indicates that the middle 80% includes outlying cost increases, reflects significant dispersion, and includes pipelines with idiosyncratic cost changes. To the extent that shippers submitted more detailed analyses in 2015 and 2010, they presented this evidence to support manual data trimming proposals, which the Commission rejected in favor of trimming the data set to the middle 50%.⁴⁸ We are concerned that it would be incongruous to reject manual data trimming while at the same time requiring commenters to present similar analyses to justify continued use of the middle 50%.

23. For these reasons, we are no longer persuaded by the Commission's reasoning in the Initial Order for using the middle 80%. Accordingly, we propose to calculate a revised index level using the middle 50% and seek comment on this proposal.

B. Income Tax Policy Change

24. We are concerned that removing the Income Tax Policy Change from the index calculation could result in oil pipeline rates that are unjust and unreasonable. Thus, we propose to revise the index level prospectively by using unadjusted page 700 data that reflects the effects of the Income Tax Policy Change on pipeline cost changes from 2014–2019.

25. Several considerations support this proposal. The D.C. Circuit and the Commission have concluded that allowing MLP pipelines to recover an income tax allowance in addition to a return on equity (ROE) determined using the Discounted Cash Flow (DCF) model results in an impermissible double recovery of investor-level tax costs and produces unjust and unreasonable rates.⁴⁹ Although the

Income Tax Policy Change eliminated this double recovery by prohibiting MLP pipelines from recovering an income tax allowance, oil pipeline rates have not incorporated this policy change into going forward rates following the vacatur of the Rehearing Order.⁵⁰ Because indexing is the Commission's primary ratemaking methodology for oil pipelines and because indexed oil pipeline rates must be just and reasonable, we believe that the index calculation should address the Income Tax Policy Change.

26. Furthermore, the index is intended to reflect changes in costs recoverable under the Opinion No. 154–B methodology,⁵¹ such as the Income Tax Policy Change. The Commission and the D.C. Circuit have long recognized that the index should reflect changes in costs recoverable under the Opinion No. 154–B methodology.⁵² The index is the primary means for adjusting rates to recover those costs, and the Commission uses the Opinion No. 154–

⁵⁰ With regard to natural gas pipeline rates, the Commission acted to address this double recovery by requiring natural gas pipelines to submit a one-time filing for the purpose of evaluating the impact of the Income Tax Policy Change and the Tax Cuts and Jobs Act on the pipeline's revenue requirement. *Interstate & Intrastate Nat. Gas Pipelines*, Order No. 849, 164 FERC ¶ 61,031, at P 30 (2018), *reh'g denied*, Order No. 849–A, 167 FERC ¶ 61,051 (2019). This process allowed for MLP natural gas pipelines to voluntarily reduce their rates in response to the Income Tax Policy Change and for the Commission to initiate rate investigations pursuant to section 5 of the Natural Gas Act where the pipeline appeared to be over-recovering its cost of service as a result of the policy change. *E.g.*, *Stagecoach Pipeline & Storage Co.*, 166 FERC ¶ 61,199 (2019); *N. Nat. Gas Co.*, 166 FERC ¶ 61,033 (2019). As opposed to initiating cost-of-service complaints against oil pipelines, the Commission stated that it would incorporate the effects of the Income Tax Policy Change in the 2020 five-year review. Income Tax Policy Statement, 162 FERC ¶ 61,227 at PP 8, 46.

⁵¹ The Opinion No. 154–B methodology is the cost-of-service ratemaking methodology that the Commission uses for oil pipelines. *Williams Pipe Line Co.*, Opinion No. 154–B, 31 FERC ¶ 61,377, *order on reh'g*, Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). The Opinion No. 154–B methodology is based on trended original costs, whereby the inflationary component of the nominal return is placed in deferred earnings and recovered as part of rate base in future years. *E.g.*, *BP W. Coast Prods., LLC v. FERC*, 374 F.3d 1263, 1282–83 (D.C. Cir. 2004).

⁵² *AOPL III*, 876 F.3d at 345 (finding that the Commission “has consistently treated the index as a measure of normal industry-wide cost-of-service changes”); 2015 Index Review, 153 FERC ¶ 61,312 at P 13, *aff'd*, *AOPL III*, 876 F.3d at 345–46 (“[T]he index is meant to reflect changes to recoverable pipeline costs, and, thus, the calculation of the index should use data that is consistent with the Commission's [Opinion No. 154–B] cost-of-service methodology.”); *see also* Order no. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096 (stating that the then-existing Form No. 6 provided a “highly unsatisfactory” measure of capital cost changes because it did “not contain the information necessary to compute a trended original cost (TOC) rate base or a starting rate base” under the Opinion No. 154–B methodology).

B methodology cost data reported on page 700 to calculate the index level.⁵³ Here, the Income Tax Policy Change altered pipelines' recoverable costs by barring MLP pipelines from recovering in 2019 income tax costs that they were permitted to recover in 2014.⁵⁴ Thus, by comparing the 2014 data reported on page 700 under the Commission's previous policy with the 2019 data reported under its changed policy, the index calculation will accurately capture the effects of the Income Tax Policy Change on costs recoverable under Opinion No. 154–B.⁵⁵

27. In addition, we believe that incorporating the Income Tax Policy Change into the index complies with EPC Act 1992's dual mandates for just and reasonable rates and simplified and streamlined ratemaking.⁵⁶ As the Commission's Opinion No. 154–B methodology evolves, oil pipeline rates adjusted via indexing should reflect those changes in order to remain just and reasonable. If the Commission omits the effects of the Income Tax Policy Change from the index calculation, the alternative method for reflecting the elimination of the MLP income tax double recovery in rates would be through cost-of-service litigation.⁵⁷ We

⁵³ 2015 Index Review, 153 FERC ¶ 61,312 at PP 12–13 (adopting use of page 700 data to measure oil pipeline cost changes because, among other reasons, page 700 data is consistent with the Opinion No. 154–B methodology).

⁵⁴ Although the Income Tax Policy Change applied only to MLP pipelines, and not to non-MLP pipelines, this does not provide a basis for excluding the Income Tax Policy Change from the index calculation. As discussed above, indexing simplifies and streamlines oil pipeline ratemaking by allowing pipelines to adjust their rates based upon a generally applicable index that reflects industry-wide cost experience. *E.g.*, Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,103 (explaining that indexing “relies upon industry-wide average costs, not company-specific costs, to establish rates”). A policy change affecting the costs recoverable by particular pipelines (such as MLPs) contributes to changes in industry-wide recoverable costs and is thus appropriately reflected in the calculation of the industry-wide index. By contrast, excluding the Income Tax Policy Change from the calculation merely because it applied only MLP pipelines would produce an index level that fails to fully reflect cost-of-service changes across the industry from 2014–2019.

⁵⁵ In contrast, adjusting the data set to remove the effects of this policy change would maintain a divergence between indexed rates and Opinion no. 154–B recoverable costs.

⁵⁶ EPC Act 1992, at 1801(a).

⁵⁷ The index calculation for 2021–2026 presents the sole opportunity for addressing the MLP income tax double recovery in indexed rates via the simplified and streamlined five-year review process. As discussed above, the Kahn Methodology calculates the index level based on the change in industry-wide page 700 costs from the first year of the review period to the last. Thus, it is only possible to reflect the Income Tax Policy Change in the instant index calculation, which measures cost changes from 2014 (when MLP pipelines reported

Continued

⁴⁸ 2015 Index Review, 153 FERC ¶ 61,312 at PP 36, 42; 2010 Index Review, 133 FERC ¶ 61,228 at P 62.

⁴⁹ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016), *order on remand*, *SFPF, L.P.*, Opinion No. 511–C 162 FERC ¶ 61,228, at P 22 (2018), *reh'g denied*, Opinion No. 511–D, 166 FERC ¶ 61,142, at PP 90–95 (2019), *aff'd sub nom. SFPF, L.P. v. FERC*, 967 F.3d 788, 793–97, 801–03 (D.C. Cir. 2020); *see also* Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8. MLP pipelines do not incur income taxes at the entity level, but the Commission justified permitting MLP pipelines to recover an income tax allowance on the basis that their investors pay taxes on their allocated share of the MLP's taxable income. *See Inquiry Regarding Income Tax Allowances*, 111 FERC ¶ 61,139, at P 32 (2005). Because the D.C. Circuit and the Commission concluded that the MLP pipeline's DCF ROE already included investor-level income tax costs, a double recovery resulted from permitting an income tax allowance that recovered those same tax costs. Opinion No. 511–C, 162 FERC ¶ 61,228 at P 22.

are concerned that implementing cost-of-service policy changes in this manner would frustrate the statutory goals of efficient and simplified ratemaking embodied in EPCA 1992.⁵⁸

28. We are also concerned that adjusting page 700 data to remove the effects of the Income Tax Policy Change conflicts with the Commission's historical practice. Before the Initial Order, the Commission had not previously adjusted the reported Form No. 6 data used to derive the index level. Rather, Order Nos. 561 and 561–A “opted for a purely historical analysis”⁵⁹ for measuring pipeline cost changes based on documented cost experience, and in subsequent five-year reviews, the Commission calculated the index level using reported Form No. 6 data without adjustment. Thus, modifying MLP pipelines' reported page 700 data in the Initial Order departed from the purely historical analysis on which the Commission has consistently relied since establishing the indexing regime.

29. Moreover, our proposal would honor the Commission's assurances in the 2018 Income Tax Policy Statement that it would “incorporate the effects of [the Income Tax Policy Change] . . . in the 2020 five-year review” so that oil pipeline rates would reflect these reduced costs.⁶⁰ Whereas the

a positive income tax allowance) to 2019 (when MLP pipelines reported zero income tax allowance). Capturing this decrease in recoverable income tax costs from 2014 to 2019 will reduce the index level to incorporate the elimination of the MLP income tax double recovery. In contrast, the 2025 five-year review will reflect no change in MLP income tax costs because MLP pipelines will report zero income tax allowances for both the first and last years of the 2019–2024 period.

⁵⁸ See *Ass'n of Oil Pipe Lines v. FERC*, 281 F.3d 239, 244 (D.C. Cir 2002) (*AOPL II*) (holding that an oil pipeline ratemaking regime based in large part on cost-of-service rate proceedings “would be inconsistent with Congress's mandate under the EPCA for FERC to establish ‘a simplified and generally applicable ratemaking methodology’” (quoting EPCA 1992, at 1801(a))).

⁵⁹ *Id.* at 247 (citing *Five-Year Rev. of Oil Pipeline Pricing Index*, 93 FERC ¶ 61,266, at 61,855 (2000) (2000 Index Review), *aff'd in part and remanded*, *AOPL II*, 281 F.3d 239, *order on remand*, 102 FERC ¶ 61,195 (2003) (2000 Remand Order); Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,951 (explaining that the Commission “opted for a purely historical analysis” for calculating the index level and “has adhered to it”).

⁶⁰ Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8; see also *Inquiry Regarding the Effect of the Tax Cuts & Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223, at P 4 (2018) (“The Commission must ensure that the rates, terms, and conditions of jurisdictional services under the Federal Power Act (FPA), the Natural Gas Act (NGA), and the Interstate Commerce Act are just, reasonable, and not unduly discriminatory or preferential”); *id.* P 8 (directing oil pipelines to report on page 700 an income tax allowance consistent with the Income Tax Policy Change and the Tax Cuts and Jobs Act). As opposed

Commission acted promptly to eliminate the MLP income tax double recovery from natural gas pipeline rates, the Commission deferred adjusting oil pipeline rates until the 2020 five-year review. Failure to incorporate the Income Tax Policy Change into the index level would leave MLP oil pipeline rates unaddressed indefinitely. Furthermore, we recognize that shippers relied upon the Commission's assurances in considering whether to bring challenges against oil pipeline rates following the Income Tax Policy Change.

30. We are no longer persuaded by the reasoning provided in the Initial Order for excluding the Income Tax Policy Change from the index calculation. Contrary to the Initial Order, we do not believe there is a meaningful distinction between changes to the Opinion No. 154–B methodology and changes to the costs that pipelines input into that methodology and end up reported on page 700.⁶¹ Rather, changes to the Opinion No. 154–B methodology produce corresponding changes to the costs that pipelines can recover. Accordingly, for purposes of determining the index, any meaningful measure of changes to recoverable costs between 2014 and 2019 should reflect the Income Tax Policy Change.⁶²

31. Additionally, in contrast to the Initial Order, we do not believe that reflecting the Income Tax Policy Change would effectuate a true-up for prior-period over-recoveries.⁶³ Consistent with the purposes of the five-year review, incorporating the effects of the Income Tax Policy Change in the index calculation would align pipelines' future rates with their future costs recoverable under Opinion No. 154–B. By failing to reflect the Income Tax Policy Change in the calculation of the

to initiating cost-of-service complaints against oil pipelines, deferring action until the 2020 five-year review best fulfilled EPCA 1992's dual mandates for simplified oil pipeline ratemaking and just and reasonable rates. See *supra* note 59.

⁶¹ Initial Order, 173 FERC ¶ 61,245 at P 17 (stating that “the purpose of indexing is to allow the indexed rate to keep pace with industry-wide cost changes, not to reflect alterations to the Commission's Opinion No. 154–B cost-of-service methodology”).

⁶² In the Initial Order, the Commission stated that “[j]ust as a business must account for changes to its accounting practices when comparing costs over two different periods, we must make a similar adjustment to the reported page 700 data here to derive an ‘apples-to-apples’ comparison of pipeline cost changes.” *Id.* However, this analogy to accounting methods is misplaced. Whereas an accounting methodology simply involves the method of recording costs, as explained above, the Income Tax Policy Change directly affected the costs the MLP pipelines can recover under the Opinion No. 154–B methodology.

⁶³ *Id.* P 18.

prospective index, the approach adopted in the Initial Order would cause future indexed rates to become estranged from future recoverable costs.

32. We likewise question the Initial Order's reasoning that “[b]ecause no prior index calculation incorporated the [Commission's 2005 policy change] allowing MLP pipelines to recover an income tax allowance, it is not necessary to reflect the policy change denying those pipelines an income tax allowance in the calculation here.”⁶⁴ This statement disregards indexing's purpose and oversimplifies historical Commission practice. Indexed rates have always served as a means for recovering pipeline income tax costs. Accordingly, the five-year review index calculation was always intended to incorporate changes in pipeline income tax costs, even if the Commission previously measured those costs using an imperfect estimate.⁶⁵ Now that the Commission uses page 700 data that directly measures income tax costs, we believe that the Commission should not disregard this data when calculating the index level.

33. Moreover, contrary to the findings in the Initial Order,⁶⁶ MLP income taxes have been reflected in oil pipeline rates. Before the 2005 income tax policy change, MLP pipelines could include at least a partial income tax allowance in their costs of service.⁶⁷ To the extent that prior index calculations did not incorporate the 2005 policy change allowing MLP pipelines to recover a full

⁶⁴ *Id.* P 19.

⁶⁵ Before the 2015 Index Review when the Commission began using page 700 data, the Commission estimated pipeline cost changes using a rough proxy based on Form No. 6 accounting data. This accounting data did not directly measure changes in the income tax costs recoverable under Opinion No. 154–B. *Id.*; see also 2015 Index Review, 153 FERC ¶ 61,312 at PP 14–15 (describing this proxy and its deficiencies). The Commission relied on this proxy because direct measures of capital costs and income were not available when the index was first established. 2015 Index Review, 153 FERC ¶ 61,312 at P 14. Before page 700 was created, the Commission lamented that “the measure of the capital cost component of the cost of service is highly unsatisfactory” because Form No. 6 did “not contain the information necessary to compute a trended original cost . . . rate base or a starting rate base as allowed for in [Opinion] No. 154–B.” Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096.

⁶⁶ Initial Order, 173 FERC ¶ 61,245 at P 19.

⁶⁷ *Lakehead Pipe Line Co.*, Opinion No. 397, 71 FERC ¶ 61,338 at 62,314–15 (1995) *reh'g denied*, Opinion No. 397–A, 75 FERC ¶ 61,181 (1996) (permitting partnership entities like MLP pipelines to recover an income tax allowance for income attributable to corporate partners, but not for income attributable to individuals or other non-corporate partners); see also *Riverside Pipeline Co.*, 48 FERC ¶ 61,309, at 62,018 (1989) (applying pre-*Lakehead* policy permitting partnership pipelines to recover a full income tax allowance as if they were corporations).

income tax allowance, we believe that pipeline rates substantially came to reflect that policy over time. In particular, as the number of pipelines in the Commission's data set expanded,⁶⁸ all initial rates and non-indexing rate changes would have reflected MLP pipelines' ability to recover a full income tax allowance under the previous 2005 policy. Although we recognize that prior index reviews imperfectly captured the 2005 income tax policy change, the 2005 policy change affected oil pipeline rates over the last 15 years. Thus, we do not believe that the arguments based on the 2005 income tax policy change require excluding the Income Tax Policy Change from the index calculation.

34. For these reasons, we propose to revise the index level prospectively by using unadjusted page 700 data that incorporates the effects of the Income Tax Policy Change on pipeline recoverable costs between 2014 and 2019. We invite comments on this proposal.

C. Appropriate Source of 2014 Page 700 Data

35. Page 700 includes columns for reporting summaries of cost-of-service data for both the current year and previous year.⁶⁹ The more recently filed data reported in the previous-year column often updates the data that was filed in the prior year. As a result, for the first year of the index review period in the five-year review, the Commission uses updated page 700 data filed in the following year's Form No. 6, where available.⁷⁰

36. In the Initial Order, the Commission inadvertently departed from its prior practice by using outdated page 700 data for 2014. Although 38 pipelines filed updated 2014 data in April 2016, the Initial Order erroneously relied on those pipelines' originally filed 2014 data as reported in April 2015. Accordingly, we propose to calculate a revised index level using updated 2014, page 700 data, where available, as reported in the previous-year column in the Form No. 6 filings submitted in April 2016. This

adjustment would ensure that the index calculation reflects the most current page 700 data for 2014 in accordance with prior Commission practice.⁷¹

D. Calculating Prospective Ceiling Levels

37. We propose that pipelines recalculate their ceiling levels on a prospective⁷² basis as though the revised index level was effective throughout the five-year period.⁷³ This approach will set the going-forward oil pipeline indexed rates at the proper level in future years. Furthermore, this approach will ensure that future rates reflect the appropriate use of the middle 50% (not the distortions caused by the adoption of the middle 80%) as well as the elimination of the MLP income tax allowance.⁷⁴ We also believe that this approach is appropriate given the circumstances of this case resulting from the flaws in the Initial Order, the

⁷¹ E.g., 2015 Index Review, 153 FERC ¶ 61,312 at Workpapers, COSdata Tab (noting that "[w]here available, data for given year is taken from the 'Previous Year Amount' column of the following year's Form 6 (e.g., 2009 data is from column (c) of the 2010 Form 6)"); 2005 Index Review, 114 FERC ¶ 61,293 at P 40.

⁷² See, e.g., 5 U.S.C. 551(4) (defining "rule" under APA "as an agency statement of general or particular applicability and future effect" (emphasis added)); *Safari Club Int'l v. Zinke*, 878 F.3d 316, 333 (D.C. Cir. 2017) (explaining that "rules generally have only 'future effect'" (citations omitted)); *Georgetown Univ. Hosp. v. Bowen*, 821 F.2d 750, 758 (D.C. Cir. 1987) ("The . . . suggestion that a retroactive rulemaking is permissible to remedy a procedural defect in a rule would, if accepted, make a mockery of the provisions of the APA. . . . [B]oth the express terms of the APA and the integrity of the rulemaking process demand that the corrected rule, like all other legislative rules, be prospective in effect only.").

⁷³ For example, assume that Pipeline A's ceiling level on June 30, 2021, was \$5.00 and that Pipeline A has not subsequently revised its rate by a method other than indexing. See 18 CFR 342.3(d)(5). Under our proposal, if the Commission adopts a revised index level of PPI-FG-0.21% in this proceeding, Pipeline A's recomputed ceiling level would be \$6.13941 as of June 30, 2025 ($\$5.00 \times (0.984288 \times 1.087107 \times 1.133194 \times 1.012647)$). See Reinstatement Order, 188 FERC ¶ 61,173 at P 1 (listing index multipliers that result from using index level of PPI-FG-0.21%).

⁷⁴ The index is cumulative from year to year, whereby each annual index is applied to the pipeline's ceiling level from the preceding year. 18 CFR 342.3(d)(1); Order no. 561, FERC Stats. & Regs. ¶ 30,985 at 30,954. In the Reinstatement Order, the Commission directed pipelines to recompute their ceiling levels as though the Initial Index applied for the full five-year period. Reinstatement Order, 188 FERC ¶ 61,173 at P 1. As a result, if the Commission adopts a revised index level that incorporates the Income Tax Policy Change, this determination would not be fully reflected in rates unless pipelines' ceiling levels are recomputed as though the revised index level applied for the full five-year period. By contrast, if ceiling levels were computed as if the revised index level applied as of July 1, 2025, rather than for the full five years, pipeline rates would only partially reflect the Commission's determination to eliminate the MLP income tax allowance from the index calculation.

timely concerns raised by shippers, and the procedural holdings of *LEPA v. FERC*. Additionally, this approach would conform to the Commission's practice in the 2000 five-year review, where it adopted a revised index level following a judicial remand.⁷⁵ We seek comment upon this proposal. Moreover, commenters may address whether, in the alternative, pipelines' ceiling levels should only reflect a revised index level as of July 1, 2025, rather than for the full five-year period.

III. Request for Comments

38. We invite comments on the Commission's proposal to calculate a revised index level, as described above. Commenters may address any issues regarding the appropriate index level following *LEPA v. FERC*, including, but not limited to, whether the Commission should amend the Initial Index by relying solely upon the middle 50%, incorporating the Income Tax Policy Change, and using updated page 700 data for 2014. Commenters may address the calculation of the revised index level. In addition, commenters should renew any arguments raised in requests for rehearing or clarification of the Initial Order that they would like for the Commission to consider in determining the index level for this five-year review period.

39. In their initial comments, commenters may also describe any additional remedial steps not discussed herein that they believe the Commission should take following the vacatur of the Rehearing Order in *LEPA v. FERC*. Commenters may also address any potential action that the Commission should take regarding the period between (a) the March 1, 2022 effective date of tariff records filed pursuant to the Rehearing Order and (b) September 17, 2024, when the Commission reinstated the Initial Order.

40. We acknowledge that the Commission has not previously undertaken a supplemental rulemaking to consider revisions to the index level outside of the five-year review process established in Order No. 561. However, in the present circumstances, we believe that it is appropriate to initiate new notice-and-comment procedures given the D.C. Circuit's holdings in *LEPA v. FERC* and our ongoing concerns with the Commission's determinations in the Initial Order. Commenters may address any issues or concerns associated with

⁷⁵ 2000 Remand Order, 102 FERC ¶ 61,195 at PP 1, 31 (allowing pipelines to recalculate their ceiling levels as though the revised index level adopted on remand was in effect throughout the ongoing five-year period).

⁶⁸ Notably, 164 of the 277 total oil pipelines in the Commission's data set, or 59% have been added since the 2005 five-year review.

⁶⁹ For example, pipelines' reported cost-of-service data for the 2014 in their page 700s submitted in April 2015 would be listed in the current-year column and cost-of-service data for 2014 would shift to the previous-year column in the page 700s submitted in April 2016.

⁷⁰ *Five-Year Rev. of the Oil Pipeline Pricing Index*, 114 FERC ¶ 61,293, at P 40 (2006) (2005 Index Review) (finding that a witness was "correct to use the data contained in [a] resubmitted FERC Form No. 6").

the proposal to revise the index level during the five-year period.

IV. Comment Procedures

41. Initial comments are due November 26, 2024. Reply comments are due December 20, 2024. Comments must refer to Docket No. RM25–2–000, and must include the commenter's name, the organization they represent, if applicable, and their address. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

42. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

43. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

V. Document Availability

44. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>).

45. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

46. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at

ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.reference.room@ferc.gov.

By direction of the Commission.

Issued: October 17, 2024.

Debbie-Anne A. Reese,

Secretary.

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DEPARTMENT OF STATE

22 CFR Parts 120, 121, and 126

[Public Notice: 12543]

RIN 1400–AE73

International Traffic in Arms Regulations (ITAR): U.S. Munitions List Categories IV and XV

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) proposes to amend the International Traffic in Arms Regulations (ITAR) to revise U.S. Munitions List (USML) Categories IV and XV and related sections of the ITAR to clarify and standardize the regulatory text, add items that warrant designation on the USML, and remove those items that no longer warrant designation on the USML. The Department further proposes to add three new license exemptions to the ITAR.

DATES: Send comments on or before November 22, 2024.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the *Regulations.gov* website at: <https://www.regulations.gov> and search for the docket number DOS–2024–0035.
- Email: DDTCPublicComments@state.gov. Commenting parties must include RIN 1400–AE73 in the subject line of the email message.

See **SUPPLEMENTARY INFORMATION** for other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2217; email DDTCCustomerService@state.gov; SUBJECT: International Traffic in Arms Regulations: USML Categories IV and XV (RIN 1400–AE73).

SUPPLEMENTARY INFORMATION: The Department of State's Directorate of Defense Trade Controls (DDTC) regulates the export, reexport, retransfer,

and temporary import of the defense articles and defense services identified on the USML at ITAR § 121.1. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other department or agency of the U.S. Government are subject to the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in supplement no. 1 to part 774). The EAR is administered and enforced by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. This rule does not modify the list of defense articles and defense services controlled for purposes of permanent import by the Attorney General, as enumerated on the U.S. Munitions Import List (USMIL) at 27 CFR 447.21.

Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778), the authority from which the ITAR is derived, requires periodic review to determine what articles and services, if any, no longer warrant designation on the U.S. Munitions List at 22 CFR 121.1. In maintaining the USML, DDTC's Office of Defense Trade Controls Policy (DTCP) identifies articles and services for review through a variety of methods, including informal public and interagency comment, commodity jurisdiction reviews, advisory opinions, and technology monitoring. The Department maintains the USML such that it comprises those defense articles or defense services that provide a critical military or intelligence advantage or, in the case of firearms, have an inherently military function. The Department, informed by consultations with its interagency partners, determined that the additional defense articles this rule proposes to designate on the USML warrant ITAR control and those articles it proposes to remove from the USML no longer do. This rule also proposes to amend and clarify certain regulatory text that describes items on the USML.

Further, on December 20, 2023, Vice President Kamala Harris convened the National Space Council to discuss U.S. leadership in space. The Departments of State and Commerce were subsequently tasked to “review relevant export controls and processes to better enable a globally competitive U.S. space industrial base while protecting our national security and foreign policy interests.” In addition to clarifying existing controls, the Department identifies three primary methods to meet that objective. First, it presents several updates to the USML's structure, terminology, and concepts. Second, it proposes three new license exemptions within the ITAR and the transition of

guidance from an existing USML note into a fourth new exemption within a new section, § 126.8. Third, it proposes revisions to USML Categories IV and XV.

With this rule, the Department proposes to amend specific paragraphs within the USML to address controls that were identified as potentially requiring addition, removal, revision, or clarification. The Department proposes the following general types of changes to the ITAR: (1) USML Modernization Efforts, (2) Civil Space-Related License Exemptions and Special Licensing Provisions, and (3) USML Category Revisions.

The Department invites feedback from industry and other interested parties on these proposals, which are further explained in that order below. In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at <https://www.regulations.gov>.

USML Modernization Efforts

The Department is modernizing the USML, specifically to improve its usability, clarity, and consistency in structure and regulatory text. This proposed rule contains revisions to that effect in the following areas:

Revision and Removal of Notes and Expansion of § 121.0 Definitions

The Department proposes to relocate content in notes within the USML, which has regulatory effect, into the relevant text of the USML paragraphs, or into new definitions in § 121.0. The Department also proposes to update or remove other notes within the USML for clarity and to avoid redundancy.

To create additional clarity within the text of the USML, the Department proposes to add definitions for the following new terms, many of which are currently contained in notes: amateur rocket, amateur rocket motor, bomb, excluded National Aeronautics and Space Administration (NASA) spacecraft, ground sample distance, hosted payload, human spaceflight preparations, loitering munition, mine, payload, primary payload, range, real-time, secondary payload, spacecraft, spacecraft bus, spacecraft housekeeping data and output, spacecraft payload, and spectral bandwidth.

ITAR part 120 maintains defined terms that are relevant to the ITAR, while other definitions are located in notes to USML paragraphs. Consistent with the Department's overall effort to streamline and clarify the content and organization of the ITAR, this rule proposes to consolidate defined terms used within the USML in one location at § 121.0. The Department will further

consider, and requests public comment on, whether the Department should instead move any of those terms to part 120, so they apply across the ITAR instead of just the USML.

Removal of Specially Designed as a Criterion in Certain Paragraphs

The Department further proposes to revise those paragraphs where the term specially designed either does not narrow the scope of the paragraph or can be replaced with technical criteria that provide more specific controls. The Department does so to enhance clarity within the regulatory text.

Consistency in Construction

The Department proposes to start each paragraph of the USML with the specific article of interest, followed by any qualifying criteria such as characteristics, functions, or performance capability. The Department does so to improve both the USML's consistency and its ease of navigation.

The Department also proposes to relocate in-line catch-all entries (*i.e.*, those located in the same paragraph as the article they are specially designed for) to the end of the paragraph to which they apply, unless it applies only to a portion of the control. The Department does so to enhance clarity and consistency within the regulatory text.

Structure of USML Categories

The Department proposes to structure certain USML control text to more consistently follow the organizational composition described in § 120.10(b), *Composition of U.S. Munitions List categories*. Restructuring to group paragraphs according to § 120.40, *Compositional terms*, will improve the USML's ease of use and help reduce user error when performing an analysis to determine if an item is specially designed per § 120.41. Since paragraphs (a)(2) and (b)(1) through (5) only apply to USML paragraphs that use the term "specially designed" to describe items as parts, components, accessories, attachments, or software, the Department believes that clearly differentiating between the USML paragraphs that do so, and those that instead use the term "specially designed" to describe items using other § 120.40 compositional terms, will assist in the analysis. For example, in this rule, the Department proposes to move equipment and systems currently described in the parts and components paragraph of Category IV(h) to a newly created paragraph (e) of USML Category IV. A similar approach is proposed for Category XV.

Clarification of Internal References and Standardization of Regulatory Text

The Department proposes to update internal references within the USML for consistency and greater readability. For example, the Department proposes to replace references to larger divisions of subchapter M of title 22 (such as "this section") with more specific references such as "the USML," when that is the intent. Similarly, the Department proposes to update references to "this category" to the specific USML Category referenced.

The Department proposes to standardize its use of terms within the USML, including "described" and "controlled."

For consistency and ease of use, the Department also proposes to utilize metric units and minimize references to U.S. customary units.

And, finally, the Department proposes other minor changes in multiple paragraphs to promote consistency in regulatory text, grammar, and syntax without changing scope or substance.

Civil Space-Related License Exemptions and Special Licensing Provisions

The Department proposes to add to part 126 three new licensing exemptions intended to promote U.S. industrial base participation in civil space activity commensurate with its national security and foreign policy goals. The Department further proposes to codify a fourth licensing exemption currently provided as guidance in an existing note within the USML. As a reminder, the ITAR contains other requirements to be eligible to use an exemption, including requirements which may attach to transfers. Those include, but are not limited to, § 126.1 regarding proscribed destinations and statements required under § 123.9(b). Specific to the current proposed rulemaking, the four proposed exemptions are as follows.

Official Space Agency Exemption

This license exemption, proposed to be in a new § 126.8(a), would authorize certain transfers of defense articles and defense services when conducted entirely within the scope of an official U.S. government agency space program listed in § 126.8(a)(2). While the proposed list of articles and services subject to the exemption applies to several NASA spacecraft, the Department emphasizes this licensing exemption does not similarly apply to the space launch vehicles for these spacecraft. The Department assesses the underlying launch vehicle technology is independent of the spacecraft that potentially warrant a licensing

exemption, in part due to the implicitly civil, multilateral, or scientific mission of these specific spacecraft.

Space Activity Exemption

This exemption, proposed to be in a new § 126.8(b), consists of four provisions. The first would authorize certain transfers of defense articles and § 120.32(a)(2) defense services supporting space launches. Certain transfers of electrical connectors would be eligible for this exemption, as the Department assesses that, while they continue to warrant regulation by this subchapter, certain transfers of these articles may be conducted under a licensing exemption without risk to U.S. national security and foreign policy interests. The Department requests public comment on additional space technologies having both military and commercial applications that should be considered for incorporation into this exemption. Comments on the benefit of such an expansion of the exemption to the regulated community and any perceived or recommended proliferation risk mitigations are also requested.

The second provision would authorize certain services related to the transmission of space launch vehicle telemetry, to improve safety of flight and support the growing space launch industry. The Department proposes to limit this authorization to space launch vehicles since similar data can be used by rockets and missiles to deliver weapons of mass destruction.

The third provision would authorize certain services to support collaboration with foreign persons when on-orbit defense articles are utilized in support of fundamental research, as defined in § 120.34(a)(8).

The fourth provision would authorize certain services associated with radiofrequency transmissions using on-orbit defense articles, including geolocating certain automated information broadcasts, emergency transmissions, and cellular transmissions.

Space Tourism and Research Exemption

This exemption, proposed to be in a new § 126.8(c), would authorize certain transfers of manned spacecraft for space tourism or in support of fundamental research, as defined in § 120.34(a)(8).

The Department notes the proposed research exemptions apply specifically to certain basic and applied research, and not to the engineering development phase of research and development. Similarly, they do not apply to the design and development of a defense article or to research either not intended for publication or subject to publication

restrictions or non-disclosure agreements.

Special Licensing Provision for Defense Articles Incorporated Into Spacecraft Subject to the EAR

This exemption, proposed to be in a new § 126.8(d), would authorize certain transfers of defense articles while they are incorporated into spacecraft subject to the EAR. This is consistent with two current notes (note 2 to paragraph (e) and note 2 to paragraph (e)(17)) the Department proposes to remove from Category XV.

Satellite Signature Reduction

In addition to the proposed exemptions previously described, the Department also requests public comment on specific regulatory changes or clarifications to facilitate industry efforts to reduce the apparent magnitude, as viewed from Earth, of satellite brightness. Commenters should be cognizant of the Department's continued need to control signature reduction technologies that provide a critical military or intelligence advantage, including technologies to reduce spacecraft signatures as viewed in, or between, orbits.

USML Category Revisions

USML Category IV

Category Title

The Department proposes to update the title of Category IV to better reflect the items described therein and to avoid the potential misinterpretation that the list of items in the title is exhaustive.

Paragraphs (a)(1) and (2)

The Department proposes minor adjustments to USML Category IV(a)(1) and (2) for consistency in construction of the control text.

Man-Portable Air Defense Systems (MANPADS)

In USML Category IV, paragraph (a)(3) describes MANPADS, paragraph (b)(2) describes “[f]ixed launch sites and mobile launcher mechanisms for any system enumerated in paragraphs (a)(3) through (5) . . . (e.g., launch tables, TOW missile, MANPADS),” and paragraph (h)(5) describes “MANPADS grip stocks and specially designed parts and components therefor.”

To provide additional clarity and consistency in structure of the USML, with no change in the scope of the controls, the Department proposes to modify these paragraphs. The Department proposes to modify paragraph (a)(3) to enumerate the missiles and rockets used in

MANPADS. As described elsewhere in this rule, the Department proposes further modifications to paragraph (b)(2) to clarify it describes launch systems and equipment for MANPADS and certain other defense articles; thus, launch tubes for MANPADS missiles would remain described on the USML. The Department proposes to continue to describe parts and components specially designed for MANPADS grip stocks in paragraph (h)(5) but notes MANPADS grip stocks described in that paragraph would also be described in proposed paragraph (b)(2) as launch equipment for MANPADS. The Department requests public comment on the advantages and disadvantages of describing MANPADS grip stocks either only in paragraph (b)(2) or only in paragraph (h)(5).

Anti-Tank Missiles

USML Category IV(a)(4) describes “[a]nti-tank missiles and rockets.” The Department proposes to distinguish this entry from other USML paragraphs that describe other missiles and rockets that may be used to neutralize tanks, such as Category III(d)(4) for rocket propelled grenades (RPGs). The Department assesses that a commonly accepted distinction between the two is that anti-tank systems are typically guided, whereas RPGs are not. This demarcation, along with established precedent, precludes the need for a substantive revision of Category IV(a)(4). Instead, the Department proposes minor modifications for consistency in sentence structure and to clarify that it describes projectiles used to neutralize armored platforms of any kind, not just tanks.

Rockets

USML Category IV(a)(5) describes rockets, space launch vehicles (SLVs), and missiles not described elsewhere in paragraphs (a)(1) through (4). This includes rockets on the lower end of the performance spectrum that, nonetheless, warrant designation as a defense article. USML Category IV(a) excludes certain model rockets via note 3 to paragraph (a).

The Department also proposes to replace note 3 to paragraph (a) with a specific definition of “amateur rockets” in § 121.0 and to reference that definition to exclude amateur rockets from the regulatory text of paragraph (a)(5). The proposed definition is consistent with the current National Fire Protection Association Code definition referenced in note 3 to paragraph (a).

Bombs

The Department proposes to clarify the scope of USML Category IV(a)(6) through defining “bomb” in § 121.0 in a manner that more clearly excludes improvised explosive devices (IEDs) and other ground-based munitions. In doing so, the Department does not intend to narrow the scope of the USML and notes bombs dropped from ground-launched munitions are still dropped from the air (e.g., bomblets dropped from a munition launched from a ground vehicle), while some munitions marketed as ‘bombs’ may more appropriately be classified as rockets or missiles.

Mines

The USML currently enumerates mines in three separate paragraphs in USML Category IV. Paragraph (a)(9) describes “[a]nti-personnel, anti-vehicle, or anti-armor land mines (e.g., area denial devices).” Paragraph (a)(10) describes “[a]nti-helicopter mines.” And paragraph (a)(11) describes “[n]aval mines.” The Department proposes to clarify, via a new parenthetical, that paragraph (a)(9) describes both Terrain Shaping Obstacles (TSOs) that are compliant with the Ottawa/Presidential Landmine Policy and non-compliant area denial devices (ADDs).

The Department also proposes to clarify that paragraph (a)(10) describes mines designed to target any type of aircraft, such as unmanned aerial vehicles (UAVs)—not just helicopters. The Department is unaware of any anti-UAV mines that are not anti-helicopter mines. Moreover, the Department assesses that any notional or future anti-aircraft mines that are not also anti-helicopter mines warrant the same level of control as anti-helicopter mines.

To facilitate additional proposed subordinate paragraphs to paragraph (a), the Department proposes to delete the conjunction “or” at the end paragraph (a)(11). The Department also proposes to move the definition of “mine” currently found in note 4 to Category IV(a) to § 121.0, refine the definition, and delete the original note.

Grenades

The Department proposes to remove the reference to “high explosive” in USML Category IV(a)(12) to prevent confusing the articles described in this paragraph with law enforcement tools, such as stun grenades, that are not subject to the ITAR. Instead, the Department proposes the paragraph refer to hand grenades “designed to be lethal or destructive”, with a parenthetical list of examples, as more

reflective of the types of grenades the Department intends to describe in this paragraph.

Loitering Munitions

The Department proposes to add new paragraph (a)(13) to USML Category IV to enumerate loitering munitions, thereby distinguishing them from other defense articles with similar functionality, e.g., UAVs designed for repeated missions, instead of a single use. In support of this new paragraph, the Department proposes to add a regulatory definition of “loitering munition” in § 121.0.

Kinetic Kill Vehicles

The Department proposes to move kinetic kill vehicles currently described in USML Category IV(h)(3) to a new entry in paragraph (a), with no change in the scope of control.

Post-Boost Vehicles

The Department proposes to move post-boost vehicles currently described in USML Category IV(h)(12) to a new entry in paragraph (a), with an expanded description for clarity in the regulatory text but no change in the scope of control.

Hypersonic Glide Vehicles

The Department notes most hypersonic vehicles (HVs) are described on the USML in either Category IV or VIII. However, the Department assesses that the functionality of hypersonic glide vehicles (HGVs) requires specific enumeration on the USML. The Department thus proposes to add a new paragraph (a)(16) in Category IV for HGVs and specially designed parts and components therefor. The Department further proposes to designate this paragraph as “MT” (see § 120.10(d)).

Re-Entry Vehicles

The Department proposes to move the control for re-entry vehicles within USML Category IV from paragraph (h)(17) to new paragraph (a)(17) with minor textual changes. The Department also proposes to incorporate the guidance currently in the note to paragraph (h)(17) into the new paragraph (a)(17) and to clarify the scope of paragraph (a)(17) to better facilitate the order of review. Thus, the Department further proposes to delete the note to paragraph (h)(17).

Range and Payload

The Department proposes to move the definitions of “range” and “payload,” currently found in the notes to USML Category IV(a), to § 121.0.

Model Rockets

Certain rockets described in USML Category IV(a)(5) are excluded from that paragraph by note 3 to USML Category IV(a). The Department proposes to delete note 3, while maintaining the scope of paragraph (a), by adding a definition for “amateur rocket” in § 121.0 and modifying paragraph (a)(5) to exclude amateur rockets.

Launch Platforms

Paragraphs (b)(1) and (2) of USML Category IV describe “[f]ixed launch sites and mobile launcher mechanisms” for articles described in paragraphs (a)(1) through (5). For clarity, the Department proposes to delete the parenthetical example in paragraph (b)(2) since the “TOW missile” and “MANPADS” are described in paragraph (a).

With advances in technology, such as maritime launch sites, the Department also proposes to modify paragraphs (b)(1) and (2) to describe “launch systems and equipment” to clarify they describe all launch system variants. This change also facilitates the Department’s proposed intent to describe all launch systems for Category IV munitions in Category IV, changing the current practice of describing them according to the platform into which they are integrated, as currently facilitated by notes 1 and 2 to paragraph (b). Additionally, consistent with the current launch system controls for Category IV munitions, the Department proposes to add a parts and components catch-all control to paragraphs (b)(1) and (2).

The Department also proposes to delete the first two notes to paragraph (b) in the current regulation. Notes 1 and 2 direct the user to Categories VI, VII, and VIII for launcher mechanisms integrated into platforms described therein. However, the Department now proposes to describe launch systems according to the articles launched, not the platforms from which they are launched. This will result in describing articles such as the M299 and LAU-61 launchers in Category IV(b), while continuing to describe in Category VIII articles such as weapons pylons for integrating those launchers with aircraft. The Department assesses articles specially designed for the integration of a defense article described in USML Category IV with an operational platform should remain described in Category VI, VII, or VIII with their respective platforms, since they are better described as either articles for integrating launch equipment or, in the case of bomb racks, as release

mechanisms for self-launched munitions. The Department also proposes to add a new note 1 to paragraph (b) to ensure practitioners are aware that accessories, attachments, and associated equipment for USML Category XX(a) articles remain described in USML Category XX following the movement of launch systems and equipment to Category IV.

This proposed change in the Department's approach is intended, in part, to address launchers that are repurposed from one platform to another, or even to fixed, land-based installations. In such cases, the Department assesses it is inappropriate for the export classification of an article to change based solely on the platform with which it is used. However, maintaining the original platform-specific classification for a launcher installed on a different platform also causes unnecessary confusion and can delay licensing, compliance, and enforcement. Further challenges arise when the control text for launchers on different platforms differs either in the relevant USML paragraph or its related catch-all entry, or in the significant military equipment (SME) status of those paragraphs. This is not a theoretical issue, as the Department has identified multiple instances where launch equipment has been repurposed from aircraft or ships to vehicles or fixed installations (*e.g.*, the M299 launcher and Mark 41 Vertical Launch System).

Thus, the Department proposes to modify the relevant paragraphs of Categories VI, VII, and VIII so they only describe articles used to integrate either the launch systems described in Category IV(b), or self-launched munitions described in Category IV(a) that do not require a separate launch system (*e.g.*, bombs that attach only via hard points), with platforms described in those categories. The Department assesses these changes will eliminate the potential conflict with the order of review in which the existing notes imply reclassification from the SME paragraph of Category IV to a non-SME paragraph in another category. The proposed change will also reduce confusion, and potential reclassification, when the same equipment is used on multiple platforms. The Department is coordinating with the Department of Commerce's Bureau of Industry and Security to ensure consistency in its related catch-all controls for any articles that move between USML categories because of this new approach.

USML Category IV(c)

The Department notes it will address issues related USML Category IV(c) in a separate rulemaking. However, the Department still welcomes comments related to this paragraph.

Note 1 to Paragraph (c) The Department proposes to modify note 1 to USML Category IV(c) to clarify that, while paragraph (c) describes tanks specially designed for launch-site storage or handling of certain propellants, it does not describe tanks designed for commercial transportation and storage.

Note 2 to Paragraph (c) Note 2 to USML Category IV(c) points to USML Category XI for controls on "Aircraft Missile Protection Systems (AMPS)." The Department proposes to delete note 2, assessing the pointer is no longer necessary for contemporary users and not specific enough for novice users. These systems are known by multiple names, and the term AMPS is not used in USML Category XI. However, the Department believes that current practitioners have already determined the export classification of their specific aircraft survivability equipment. Separately, a novice's search for "AMPS" or "Aircraft Missile Protection Systems" would not identify an entry in USML Category XI—even if the specific system is described, for example, in USML Category XI(a)(4)(iii). The Department considered revising the note to provide a more explicit cross-reference but proposes to delete it instead, as similar cross-references are not provided for most other technologies described on the USML and the Department is not aware of significant confusion in the regulated community as to the location of these specific controls that would warrant treating them differently from other technology controls.

Propulsion Systems

The text of USML Category IV(d) uses the term "power plants" to refer to the items described in its subordinate paragraphs. The Department proposes to replace that term with "propulsion systems." However, the Department further proposes to exclude from Category IV(d) those propulsion systems described in USML Categories XV or XIX, to clarify those items are not described in the subordinate paragraphs of (d), while deleting note 2 to paragraph (d), as it is made redundant by these changes.

Rocket Stages, Motors, and Engines

The Department proposes minor changes to USML Category IV(d)(1) for consistency in construction and uniformity. The Department also proposes simplifying the regulatory text of paragraphs (d)(2) and (3) to reflect its intent to describe all motors and engines that satisfy the performance criteria, regardless of the propellant.

Air-Breathing Engines and Pressure Gain Combustion-Based Propulsion Systems

The Department proposes minor changes to paragraphs (d)(5) through (7) of USML Category IV for consistency. The Department also proposes to designate paragraphs (d)(5) and (6) as "MT" based on an assessment that the described articles are also described in the Missile Technology Control Regime Equipment, Software, and Technology Annex (MTCR Annex).

Note 1 to USML Category IV(d)

Note 1 to USML Category IV(d) provides a carve-out for motors that contain five pounds or less of propellant. The Department proposes to move that regulatory text into the definition of amateur rocket motors in § 121.0 and delete the note.

Addition of USML Category IV(e)

The Department proposes to move the following systems and equipment in USML Category IV from current paragraph (h) to a new paragraph (e): flight control and guidance systems (currently described in paragraphs (h)(1) and (28)), kinetic kill vehicles (currently described in paragraph (h)(3)), thrust vector control systems (currently described in paragraph (h)(4)), thermal protection systems (currently described in paragraph (h)(8)), self-destruct systems (currently described in paragraph (h)(10)), separation systems (currently described in paragraph (h)(11)), post-boost vehicles (currently described in paragraph (h)(12)), hypersonic glide vehicles, and unmanned atmospheric re-entry vehicles (both of which are currently described in paragraph (h)(17)), attitude control systems (currently described in paragraph (h)(28)), and seeker systems (currently described in paragraph (h)(2)).

These changes are part of the Department's USML modernization efforts and align with the USML structure outlined in § 120.10, by describing end-items, systems, and equipment in paragraphs that precede paragraphs dedicated to parts, components, accessories, and attachments.

Flight Control Systems, Guidance Systems, and Attitude Control Equipment

Flight control systems are described in paragraphs (h)(1) and (28) of USML Category IV. Those two paragraphs also describe guidance systems and attitude control equipment, respectively. Along with moving these systems to new paragraph (e), the Department also

proposes to consolidate them in three subordinate paragraphs of new paragraph (e)(1), with each subordinate paragraph describing one of the three types of systems or equipment (flight control systems, guidance systems, and attitude control equipment).

Within the paragraph for guidance systems, the Department proposes to delete the parenthetical reference to “guidance sets” and the related note to paragraph (h)(1) as redundant, assessing that “guidance sets” described in paragraph (h)(1) already meet the § 120.40 definition of a “system” and are thus already described by the term “guidance systems.” The Department also believes any manufacturers who historically used the “guidance set” term of art understand the export classification of their items, further reducing the utility of the reference.

Thrust Vector Control Systems

The Department proposes to simplify the regulatory text of current USML Category IV(h)(4) and move it to paragraph (e)(2). Specifically, the Department proposes to eliminate the reference to “missile or rocket” at the beginning of the paragraph, noting the text of proposed paragraph (e) renders it unnecessary. The Department further proposes to clarify this paragraph does not describe spacecraft thrust vector control systems described in USML Category XV.

Thermal Protection Systems (*e.g.*, Heat Shields and Heat Sinks)

USML Category IV(h)(8) describes heat shields for re-entry vehicles or warheads. The Department proposes to revise this paragraph and move it to paragraph (e)(3) to clarify the thermal protection systems described in this paragraph are not limited to traditional heat shields and to better distinguish this entry from a related paragraph in USML Category XV that describes spacecraft heat shields. The Department further proposes to designate new paragraph (e)(3) as “MT” based on an assessment that all such thermal protection systems designed for atmospheric re-entry are usable in MTCR Category I systems, and thus are described in the MTCR Annex. The Department also proposes to add a catch-all control to this paragraph. The Department also proposes to collocate this catch-all control with the thermal protection systems controls to improve the regulation’s clarity and ease of use.

Regarding the similar paragraph describing spacecraft heat shields in Category XV, the Department requests public comment on any perceived benefits and drawbacks to consolidating

these two heat shield paragraphs under Category XIII.

Self-Destruct Systems

USML Category IV(h)(10) describes self-destruct systems. The Department proposes to make minor modifications to this paragraph for consistency and clarity, with no change in the scope of control, and move it to paragraph (e)(4) of USML Category IV.

Separation Systems

USML Category IV(h)(11) describes separation systems. The Department proposes to revise this paragraph for consistency and clarity, with no change in the scope of control, and move it to paragraph (e)(5) of USML Category IV. This paragraph currently describes all separation systems, including those used to separate satellites from space launch vehicles. The Department considered removing certain separation mechanisms from the USML but declines to do so after assessing the technology differences between those for civil purposes and military purposes do not provide sufficient differentiation.

SAFF Components

USML Category IV(h)(9) describes safing, arming, fuzing, and firing (SAFF) components for missiles and rockets. The Department proposes to move it to the newly created paragraph (e)(6) and clarify it describes all SAFF systems for rockets, missiles, loitering munitions, and bombs, as well as their specially designed parts and components.

In support of that change, the Department proposes to replace the limiting compound adjective “missile and rocket” with a criterion for articles described in paragraph (a)(1), (2), (3), (4), or (5) or (g) of USML Category IV. This will avoid an expansion of scope from the current USML by avoiding control of, for instance, SAFF systems for mines that are nominally subject to the EAR. By adding a reference to paragraph (g), the Department intends to incorporate SAFF systems for non-nuclear warheads currently described in USML Category IV(h)(18). This proposed change will consolidate all SAFF systems and components described on the USML into a single paragraph focused on the underlying technology instead of its end-use.

Seeker Systems

USML Category IV(h)(2) describes seeker systems. The Department proposes to revise this paragraph for consistency and clarity, with no change in the scope of control, and move it to paragraph (e)(7) of USML Category IV. Additionally, the Department requests

public comment on whether there are any areas of potential overlap between this and other USML entries and if so, whether entries describing these systems could potentially be consolidated.

Test Equipment

The Department proposes to add USML Category IV(f) to describe test equipment for certain rockets, missiles, SLVs, and missile seekers. The Department assesses this technology provides a critical military advantage because testing protocols are increasingly being utilized in complex missile designs. The Department notes that testing software and protocols directly related to rockets, missiles, SLVs, or missile seekers are currently described in USML Category IV(i).

Non-Nuclear Warheads

The Department proposes to simplify the regulatory text of USML Category IV(g). Additionally, the Department proposes to add chemical and biological warheads to the non-exhaustive parenthetical list of examples to further clarify the scope.

USML Category IV(h)

The Department proposes to modify USML Category IV(h) to economize the text of its subordinate paragraphs. Currently, some subordinate paragraphs of (h) require an article be used in an end item described elsewhere in Category IV. The Department proposes to clearly stipulate in paragraph (h) that the articles in its subordinate paragraphs are for end-items described elsewhere in Category IV, thereby eliminating the need to repeat that requirement in each of its subordinate paragraphs. Consistent with its intent to move systems from paragraph (h) to paragraph (e), the Department also proposes to delete the reference to systems and subsystems in paragraph (h).

USML Category IV(h)(1) Through (4)

Paragraphs (h)(1) through (4) of USML Category IV describe flight control systems, guidance systems, seeker systems, kinetic kill vehicles, and thrust vector control systems. As noted elsewhere in this rule, the Department proposes to move those articles to another paragraph. Consistent with this change, the Department proposes to reserve paragraphs (h)(1) through (4) to maintain the current numbering in the remaining paragraphs.

Grip Stocks for MANPADS

The Department proposes to modify the wording of USML Category IV(h)(5),

so the article of interest is listed first rather than the end item for which it is used.

Nozzles, Nozzle Throats, Nose Tips, Nose Fairings, and Aerospikes

The Department proposes to eliminate the reference to rockets and missiles in paragraphs (h)(6) and (7) of USML Category IV, based on proposed changes to paragraph (h) that more broadly reference articles described in USML Category IV.

USML Category IV(h)(8) Through (12)

Paragraphs (h)(8) through (12) of USML Category IV describe heat shields, SAFF components, self-destruct systems, separation mechanisms, and post-boost vehicles. As the Department proposes to move these paragraphs to other locations within USML Category IV, it further proposes to reserve paragraphs (h)(8) through (12) to maintain the numbering of the paragraphs that follow.

Engine or Motor Mounts

The Department proposes minor modifications to USML Category IV(h)(13) for clarity and consistency, with no intended change in the scope of control.

Combustion Chambers

USML Category IV(h)(14) describes combustion chambers “specially designed” for articles enumerated in paragraphs (a) and (d) of USML Category IV. However, the Department is unaware of a scenario wherein combustion chambers used with articles described in paragraph (a) or (d) would be released by the “specially designed” analysis provided at § 120.41(b). As such, the Department proposes to simplify the control paragraph by removing “specially designed” as a criterion for control. Additionally, the Department proposes to eliminate the limiting criterion “for articles enumerated in paragraphs (a) and (d).” The Department assesses this criterion is redundant, as it is unaware of combustion chamber use in articles described in the remaining Category IV paragraphs. This assessment, along with the regulatory text the Department proposes for paragraph (h), means the removal of this criterion does not change the scope of the control.

Injectors

Similar to combustion chambers, the Department is unaware of injectors used in articles described in USML Category IV that would be released by the “specially designed” analysis provided at § 120.41(b), and the proposed

regulatory text for paragraph (h) ensures the injectors described in paragraph (h)(15) are “for articles described in USML Category IV.” As such, the Department proposes to remove the “specially designed” criterion from paragraph (h)(15), with no change to the scope of the control.

Igniters

The Department proposes to revise USML Category IV(h)(16) for clarity and consistency, and with a minor change in scope. The current USML describes solid rocket motor and liquid engine igniters. However, the Department assesses igniters used in amateur rocket motors do not provide a critical military or intelligence advantage. The Department believes that simplifying the paragraph to just “igniters,” with the proposed changes to paragraph (h) to describe parts, components, accessories, and attachments for articles described in Category IV appropriately scopes the control by removing igniters for amateur rocket motors.

Parts and Components for Non-Nuclear Warheads and USML Category IV(e) Systems

The Department proposes to expand the scope of the USML Category IV(h)(18) catch-all control to include two types of parts and components specially designed for systems described in paragraph (e): non-electronic radiation hardened parts and components and parts and components specially designed for underwater launch. The Department’s assessment is that such articles provide a critical military advantage when used in USML Category IV systems.

Penetration Aids

The Department proposes to designate USML Category IV(h)(19) as SME per § 120.36, since the articles it describes are vital to the successful deployment of warheads described in USML Category IV(g) which are, themselves, SME.

Motor Cases

Consistent with changes it proposes to USML Category IV(h), the Department proposes to eliminate the reference to “rocket” in USML Category IV(h)(20) based on the assessment that, in this context, the use of “rocket” is intended to describe the motor, not the platform in which the motor is used and that rocket motors can be used in more than just rockets. Since the technology remains the same, regardless of the platform, the Department intends for the control to remain independent of its end use.

Liners and Insulation

The Department proposes to modify the wording of USML Category IV(h)(21) for clarity and consistency, with no change in the scope of the control.

Radomes, Sensor Windows, Antenna Windows, and Embedded Antennae

The Department proposes minor modifications to USML Category IV(h)(22) for consistency in regulatory text construction and to update cross-references in the regulatory text. The Department further proposes to expand the scope of paragraph (h)(22) by adding “embedded antennae” to the list of items described therein, as embedded antennae are not antenna windows yet provide similar capability through alternative means.

Payload Fairings

The Department proposes minor modifications to USML Category IV(h)(23), to ensure it effectively describes all payload fairings for articles described in USML Category IV, not just those for rockets and missiles.

Launch Canisters

The Department proposes to modify USML Category IV(h)(24) to remove the reference to “rocket or missile” in describing launch canisters. The Department assesses the existing reference is redundant based on the proposed changes to paragraph (h).

Fuzes

The Department proposes to limit the scope of USML Category IV(h)(25) to those fuzes not already described in paragraph (e)(6) as “specially designed” parts and components of SAFF systems. The Department requests public comment on whether the retention of USML Category IV(h)(25) is necessary and if so, examples of items that could be described in this entry but are not already described in paragraph (e)(6).

Propellant Tanks and Altimeters

The Department proposes to modify USML Category IV(h)(26) and (27) to eliminate the reference to “rocket or missile” based on proposed changes to paragraph (h).

Umbilical and Interstage Electrical Connectors

In USML Category IV(h)(29), the Department proposes to remove the reference to “rockets or missiles,” consistent with similar proposed changes in other paragraphs, and to create three subordinate paragraphs, moving the umbilical and interstage connectors described therein to the new paragraph (h)(29)(i). The Department

proposes to incorporate the guidance currently provided in the note to paragraph (h)(29) to the regulatory text in the new paragraph (h)(29)(ii) and delete the note. The Department further proposes to add electrical connectors specially designed for hostile nuclear radiation environments to the new paragraph (h)(29)(iii), assessing that these connectors, used in ballistic missile systems, provide a critical military advantage.

The Department also proposes to add a licensing exemption to § 126.8 for certain activities involving connectors installed between articles described in paragraph (a)(1) or (2) and certain payloads.

Turbo Pumps

The Department proposes to add a new paragraph (h)(31) to USML Category IV describing turbo pumps specially designed for the propulsion systems described in USML Category IV(d).

Technical Data and Defense Services

The Department proposes minor modifications to USML Category IV(i) for consistency in construction of the control text.

Note to Category IV

The Department proposes to eliminate the note to USML Category IV, as it does not provide a substantive explanation of the control text. This note describes one specific circumstance wherein a system would be described in Category I of the MTCR Annex, which is not a distinction made elsewhere on the USML. For assistance identifying articles that are on the MTCR Annex, users should reference the “MT” designations provided as described in § 120.10(d).

Consideration of Prior Public Comments on USML Category IV

The Department previously published an advanced notice of proposed rulemaking (RIN 1400–AE73) on March 8, 2019, to request public comment (*see* 84 FR 8486). Twenty-five parties filed comments recommending changes, which were reviewed and considered by the Department, in consultation with other U.S. Government departments and agencies. A summary of the comments related to USML Category IV follows:

Four commenting parties recommended the Department add a note to USML Category IV, similar to note 3 to paragraph (f) of Category XV, to decontrol housekeeping and telemetry data associated with space launch vehicles. The Department declines to do so, as such data may be used in the furtherance of programs to

deliver weapons of mass destruction. However, the Department does propose to exempt certain telemetry from licensing requirements in specific circumstances, as reflected in its proposed exemptions in part 126.

Three commenting parties recommended thermal batteries be removed from the USML in favor of existing descriptions on the CCL. Thermal batteries were originally developed as, and are still predominantly used as, single-use power sources with long shelf-lives and high reliability for munitions applications. As such, they continue to provide a critical military advantage and the Department declines to remove them from the USML. Nonetheless, the Department requests public comment on civil uses of thermal batteries in space applications to allow consideration for their inclusion in a licensing exemption supporting civil space efforts.

One commenting party recommended the USML be revised to account for unmanned aerial vehicles (UAVs) used as loitering munitions. The Department proposes both a § 121.0 definition and an enumerated paragraph (a)(13) in USML Category IV for loitering munitions, as explained in this rule.

Seven commenting parties recommended various changes to USML Category IV(b). Specifically, the commenting parties recommended the exclusion of aircraft modified to launch SLVs, the exclusion of parts and components not otherwise enumerated, consistency with how launch platforms are described in other USML categories, addressing the absence of launchers for articles described in paragraphs (a)(6) through (12) of USML Category IV, decontrolling articles described therein once integrated into an end-item subject to the EAR (similar to note 2 to paragraph (e) of USML Category XV), and revising Category VI to better describe the Mark 41 Vertical Launch System (MK 41 VLS) as SME. The Department proposes revising the regulatory text of USML Category IV(b), clarifying its scope, and deleting its corresponding notes, as previously described in this rule.

Two commenting parties recommended changes to paragraph (c) of USML Category IV. One suggested defining the terms “apparatus” and “devices.” The Department plans to address this issue in a separate rulemaking. Both parties recommended changes to note 1 to paragraph (c) to avoid controlling tanks used to store propellants not subject to the ITAR. Though the Department declines to propose this change at this time, it clarifies that certain storage tanks are

not defense articles. Specifically, only those storage tanks with properties peculiarly responsible for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of a commodity described in USML Category IV(a) or (b) are described. For example, this would not include general-purpose tanks designed to store flammable liquids that are subsequently used, unmodified, in launch site applications. However, it would include a similar tank with additional properties to protect against damage from launch blasts or debris from launch failures.

One commenting party recommended distinguishing between launch platforms described in Category IV and prominent subassemblies sold independently that do not, individually, satisfy the control criteria of paragraph (b) or (c). The Department declines this recommendation and notes the example provided was such a prominent subassembly of the overall launch platform that it likely satisfies the definition of a defense article as provided in § 120.31. Specifically, it has “. . . reached a stage in manufacturing where . . . [it is] clearly identifiable by mechanical properties, material composition, geometry, or function as [a] defense [article].”

Four commenting parties recommended changes to paragraph (h)(11) to more clearly delineate between separation systems for spacecraft and those for articles described in Category IV. The Department has not identified a clear delineation and assesses that implementing a carve-out to the USML based solely on end-use would harm U.S. national security and foreign policy interests. Instead, the Department requests public comment on potentially exempting certain separation systems from licensing requirements in certain situations, as reflected in the proposed changes to part 126 for connectors.

One commenting party recommended a change to paragraph (h)(14) to remove combustion chambers of reaction control system thrusters and auxiliary systems. The Department declines this recommendation. Reaction control systems are a vital subassembly of articles described in USML Category IV. Moreover, the Department is unaware of combustion chambers used in an SLV, rocket, or missile that would otherwise be released by the “specially designed” analysis provided at § 120.41(b). The only rockets not currently subject to the ITAR are those which satisfy the definitions of model or high power rockets, which do not use such combustion chambers.

Two commenting parties recommended paragraphs (h)(15) and (16) be revised to clarify they describe injector assemblies and igniter systems, respectively, with the additional suggestion that the scope of the paragraphs be expanded to include “catch-all” controls as defined in the note to paragraph (b) of § 120.41 (to describe parts and components therefor). The Department concurs regarding the inclusion of assemblies to clarify scope. However, the Department disagrees with including “catch-all” controls on the USML for these paragraphs.

One commenting party recommended mine launchers be added to paragraph (h)(24) to close a gap in jurisdictional control. The Department proposes to modify paragraph (b) to do so.

One commenting party recommended paragraph (h)(28) be revised to clarify it does not control thrusters or actuators in attitude control systems since similar thruster designs are used in articles subject to the EAR. The Department declines to do so, since such scenarios are already addressed by the inclusion of “specially designed” within the control text.

USML Category VI, VII, VIII, and XX Conforming Changes

The Department proposes to modify USML Category VI(f)(6) and (7) to avoid overlap in controls between those paragraphs and the proposed revision and intent of Category IV(b). As such, the Department proposes to clarify these paragraphs only describe certain integration equipment, aircraft launch and recovery equipment, and certain shipborne defensive systems, not articles described in Category IV(b). The Department further proposes to split paragraph (f)(6) into three subordinate paragraphs for ease of parsing and adjust the “MT” designations for consistency with the MTCR Annex.

Similarly, the Department proposes to modify USML Category VII(g)(2) to avoid overlap in controls between that paragraph and the proposed revision and intent of Category IV(b), and therefore proposes to clarify paragraph (g)(2) only describes articles not already described in Category IV(b).

The Department proposes to add USML Category VII(g)(15) and modify USML Category VIII(h)(6) to ensure items designed for integrating certain defense articles are described in the same USML category as the platform they are being integrated into and to avoid ambiguity about whether they are controlled in USML Category IV(b).

Subsequent to these changes, these paragraphs will only describe articles

that assist in the integration between a vehicle and either a launching system or a self-launching munition.

USML Category XI

Monolithic Microwave Integrated Circuits (MMICs)

The Department proposes to modify USML Category XI(c)(4) to control the MMICs removed from Category XV. The proposed change will not change the scope of controls on MMICs, but will create clarity in controls on the items by consolidating regulatory text on MMICs under the more appropriate designation of military electronics.

Electronic Assemblies

The Department proposes to expand the scope of items described in paragraph (c)(15) of USML Category XI by adding electronic parts and components capable of operation at temperatures in excess of 125 °C and specially designed for spacecraft described in USML Category XV. The Department assesses that such items provide a critical military advantage commensurate with the electronics currently described in that paragraph. The Department proposes further revisions to paragraph (c)(15) for clarity and consistency of the regulatory text and ease of use, with no additional change in scope of the items described therein.

USML Category XII

Read-Out Integrated Circuits (ROICs)

The Department requests comment on the potential merits of removing of USML Category XII(e)(14), with no change in the scope of control. Integrated circuits described therein are already described in USML Category XI(c)(1) and the Department asks whether the regulated community sees a benefit to retaining USML Category XII(e)(14) as a separate entry.

USML Category XIII

USML Category XIII(j) describes certain materials not elsewhere specified on the USML. The Department proposes to revise paragraph (j) for consistency in the regulatory text, with no change in scope, and to add two subordinate paragraphs to paragraph (j) to describe materials specially designed for underwater launch of missiles or hostile nuclear radiation environments. As missile designs advance, the Department assesses these specific types of materials provide a critical military or intelligence advantage.

USML Category XV

Spacecraft

The Department proposes to revise USML Category XV(a) in several ways. First, the Department proposes to use two § 121.0 definitions, “spacecraft” and “excluded NASA spacecraft,” to clarify the scope and to simplify its subordinate paragraphs. By excluding specific NASA spacecraft via the proposed definition, the Department both facilitates the deletion of notes 2 and 3 to paragraph (a) (which exclude these NASA spacecraft) with no change in the scope of control and establishes a straightforward mechanism to enable the exclusion of certain NASA spacecraft in the future. The Department further considered excluding commercial low Earth orbit (CLEO) habitats and assesses doing so is unnecessary, as the proposed regulatory text does not nominally describe such spacecraft. The Department welcomes public comment identifying reasons CLEO habitats may be inadvertently described in proposed paragraph (a), as it intends only to describe spacecraft that provide a critical military or intelligence advantage as set forth in § 120.3(b).

Additionally, the Department proposes to delete the qualifying phrase “. . . whether designated developmental, experimental, research, or scientific, or having a commercial, civil, or military end use . . .” from paragraph (a). Spacecraft described in the subordinate paragraphs of paragraph (a) are defense articles, regardless of intended end-use. The Department assesses this intent is sufficiently clear without inclusion of this phrase. The Department further assesses the current note 1 to paragraph (a) is already addressed through the “order of review” guidance at § 120.11 and proposes to delete it as unnecessary.

The Department considered proposing definitions for space probe, space vehicle, space capsule, and space habitat, but declines to do so at this time, and requests comment from members of the public who believe there is a need to define one or more of these terms.

Detection or Mitigation of a Nuclear Detonation

The Department proposes to modify USML Category XV(a)(1) for consistency in construction of the control text.

Detect and Track Objects

In USML Category XV(a)(2), the Department proposes to delete the reference to “imaging, infrared, radar, or laser systems,” as the function, not the

method, provides the critical military or intelligence advantage. The Department also proposes to replace the reference to “ground, airborne, missile or space” with criteria that describe the technology critical to detecting and tracking ballistic and cruise missiles, launch vehicles, and related payloads (missiles, post-boost vehicles, kill vehicles, re-entry vehicles, and penetration aids). The Department assesses that autonomously detecting and tracking ground vehicles and aircraft via satellite no longer provides a critical military or intelligence advantage, and that the proposed criterion would exclude the tracking of all ground objects and most airborne objects, thus reducing the scope of the control. With this change, the Department intends to describe the missile defense capability without describing space situational awareness, orbital debris mitigation, or cooperative docking capabilities.

Spacecraft for Signals Intelligence

USML Category XV(a)(3) describes satellites that conduct certain intelligence collection. To clarify the intent of the control and consistency in construction of the text, the Department proposes to modify this paragraph by adding a “specially designed” criterion to the control text and removing from the text the term “conduct,” with no change in the scope of the control.

Constellations

The Department proposes to modify USML Category XV(a)(4) for simplicity and consistency in construction of the control text.

Space-Based Weapons

In USML Category XV, the Department proposes to modify paragraph (a)(5), which describes spacecraft that are anti-satellite or anti-spacecraft, and paragraph (a)(6), which describes spacecraft with space-to-ground weapon systems, for consistency in construction, simplicity, and uniformity. The Department proposes using the terms ‘space-to-space weapons’ and ‘space-to-ground weapons’ to differentiate between the two entries, and to remove the parenthetical example lists as unnecessary.

Spacecraft With Remote Sensing Capabilities

The Department proposes several revisions to USML Category XV(a)(7). To facilitate purely scientific telescopes, the Department considered limiting paragraph (a)(7) to Earth-pointing spacecraft. It declines to do so, as the

technology for Earth-pointing and non-Earth pointing spacecraft that satisfy the technical criteria in paragraphs (a)(7)(i) through (iv) overlaps to a large degree. Instead, the Department welcomes comments on specific activities that might reasonably warrant an exemption from certain licensing requirements without harming U.S. national security or foreign policy interests.

Within the control text, the Department proposes to update the threshold for some remote sensing capabilities to better reflect the current state of technology. In paragraph (a)(7)(i), the Department proposes to eliminate the spectral band threshold and replace the aperture size threshold with a threshold on light collecting area, in recognition that not all light collecting sensors are circular or readily described in terms of a physical aperture size. The Department also proposes to reduce the ground sample distance (GSD) requirement in paragraph (a)(7)(ii) from 30 meters to 20 meters. Consistent with the proposed definition of “ground sample distance” in § 121.0, the GSD requirements apply only to a sensor as calibrated.

The proposed addition of a definition for GSD and satellite spectral bandwidth in § 121.0 facilitates the Department’s proposed removal of notes 1 and 2 to paragraph (a)(7). The Department further proposes to move the guidance from note 3 to paragraph (a)(7) into the control text and delete the note.

Additionally, the Department proposes to clarify that when a spacecraft incorporates multiple sensors that perform the same function, those sensors should be assessed in the aggregate when adjudicating the applicability of this paragraph.

Radar Remote Sensing

The Department proposes to modify USML Category XV(a)(8) to narrow its scope by increasing the bandwidth criterion to 500 MHz and to make minor changes for consistency in construction and clarity. To assist its review of this control, the Department further requests comments substantiating current industry standards for radar remote sensing bandwidths, related foreign availability of such technology, and any radar remote sensing activities the Department should consider for an additional licensing exemption, similar to the list of radiofrequency sensing activities proposed for § 126.8(b)(2)(iv).

Position, Navigation, and Timing

The Department proposes to modify USML Category XV(a)(9) both for consistency in construction and to clarify the scope is limited to spacecraft

that generate a position, navigation, and timing (PNT) signal, not those that augment, amplify, re-broadcast, relay the signal or provide a differential correction. Subsequent to that change, the Department proposes to delete the note.

Autonomous Collision Avoidance

USML Category XV(a)(10) describes spacecraft that autonomously perform collision avoidance. In an increasingly congested orbital environment, the Department assesses many spacecraft will have to perform this task, and that doing so no longer provides a critical military or intelligence advantage. Based on that assessment, spacecraft no longer warrant inclusion on the USML solely due to their ability to autonomously avoid collisions. Thus, the Department proposes to delete USML Category XV(a)(10) and place it in reserve to avoid renumbering subsequent paragraphs.

Suborbital Craft

The Department proposes to modify USML Category XV(a)(11) for consistency in construction of the control text.

Inspection or Surveillance

The Department proposes to modify USML Category XV(a)(12) to eliminate the reference to servicing other spacecraft and to narrow the scope of the control to only describe surveillance spacecraft. Specifically, the Department proposes two distinct sets of surveillance criteria. The first criterion describes spacecraft specially designed to take images of another spacecraft within a defined angular resolution that doesn’t change with distance between the detector and the object. The second set of criteria describe spacecraft specially designed to monitor, follow, and record other spacecraft. With this change, the Department intends to describe the surveillance capability without describing space situational awareness, orbital debris mitigation, or cooperative docking capabilities.

Note to Paragraph (a)(12)

With the elimination of servicing from paragraph (a)(12), the guidance provided in the note to paragraph (a)(12) is no longer relevant. It is nominally relevant to newly created paragraph (a)(14) for spacecraft that non-cooperatively dock with other spacecraft. However, in new paragraph (a)(14) the Department proposes to remove the criterion for the type of docking system used and, instead, focus on the technology required to achieve uncooperative docking or grappling. As

a result of these proposed changes, the Department proposes to delete the note to paragraph (a)(12), as it is no longer relevant.

Classified Spacecraft

The Department proposes to modify USML Category XV(a)(13) for consistency in construction and simplicity of the control text.

Additions

The Department proposes to add paragraphs (a)(14) through (16). These paragraphs designate, respectively, spacecraft capable of non-cooperative grappling or docking, in-orbit construction of other defense articles, and deploying multiple spacecraft into different orbits.

The technology required to facilitate non-cooperative docking is likely to be used in an adversarial manner. A spacecraft capable of in-orbit construction of other defense articles represents a critical logistical advantage. And spacecraft that can rapidly deploy multiple spacecraft into multiple different orbits provide a critical military or intelligence advantage when compared to commercial systems that may be able to achieve the same result over a much longer timeframe.

Articles Jettisoned From Another Spacecraft

The Department proposes to move USML Category XV(e)(20) to paragraph (a)(17) and then modify the control text for clarity and consistency in construction of the control text. The Department proposes to simplify it by moving the required characteristics to three subordinate paragraphs for guidance, navigation, and control (GNC) systems, attitude control systems, and propulsion systems, respectively.

Ground Control Systems

The Department proposes to modify the text in USML Category XV(b) for simplicity by eliminating references to “telemetry, tracking, and control” since the Department assesses those functions effectively encompass the entirety of a ground station’s purpose and are, therefore, redundant.

The Department assesses the current note to paragraph (b) is unnecessary and proposes to delete it. Paragraph (b) only describes systems and simulators, includes a specially designed criterion, and does not include a catch-all control. The Department assesses the proposed text of paragraph (b), the order of review at § 120.11, and the specially designed definition at § 120.41 would render the note superfluous.

Movement of Systems

The Department proposes to move the following systems within USML Category XV to paragraph (c): cryocoolers and cold finger systems, active vibration suppression systems, and attitude determination and control systems. These changes align with the Department’s intended USML structure, as described in § 120.10, with end-item, system, and equipment controls generally listed prior to paragraphs dedicated to parts, components, accessories, and attachments.

Active Cooling Systems

The Department proposes to relocate USML Category XV(e)(4) to paragraph (c)(1), along with several modifications to the control text. The Department proposes to replace the requirement that the cooling system be space-qualified with a “specially designed” criterion. The Department assesses that, for certain technologies, space qualification is no longer the best discriminator, since all spacecraft and equipment, parts, and components are essentially space-qualified by default and designed, manufactured, or tested for operation in space. Elimination of this term would also minimize assertions that articles otherwise described by the USML are subject to the EAR based solely on the intentional avoidance of qualification.

Additionally, the Department proposes to explicitly state that the paragraph describes only active cooling systems. This will be accomplished by moving the qualifier “active” from the parenthetical reference to the beginning of the paragraph. The Department assesses this does not change the scope of the controls since the two types of articles listed in the parenthetical reference are both active systems.

Vibration Suppression Systems

The Department proposes to relocate USML Category XV(e)(5) to paragraph (c)(2), along with several modifications, including replacing the requirement that the articles described therein be space-qualified with a “specially designed” criterion based on the same rationale used for active cooling systems. The Department also proposes to move the examples provided in the text of paragraph (e)(5) to a parenthetical list in paragraph (c)(2) for clarity.

Attitude Determination and Control Systems

The Department proposes to relocate USML Category XV(e)(10) to paragraph (c)(3), along with minor modifications for consistency in construction and enhanced clarity of the control text. The Department proposes to move the

reference to “specially designed parts and components” to the end of the paragraph’s text, as the accuracy requirements in the control text apply to the attitude control systems overall, and not to the parts and components of those systems. Additionally, the Department proposes to clarify the existing threshold of “better than” means “less than” in the context of the control and to move that qualifying regulatory text to each of the subordinate paragraphs, alongside the values for the control criteria. Consistent with the Department’s intent to regulate technologies in space consistent with how it regulates them on Earth, the Department proposes to add “or equivalent” to each orbital accuracy criterion to account for systems designed to provide the same performance while orbiting celestial bodies other than the Earth.

Thermal Protection Systems (e.g., Heat Shields and Heat Sinks)

USML Category XV(e)(19) describes heat shields and heat sinks for spacecraft. The Department proposes to move this text to new paragraph (c)(4) and revise it to clarify the scope extends beyond traditional heat shields to more complex thermal protection systems and to better distinguish it from a related paragraph in USML Category IV. Further, the Department proposes to designate the entire entry “MT,” based on an assessment that all such articles designed for atmospheric re-entry can be deployed on MTCR Category I systems.

Regarding the similar paragraph describing spacecraft heat shields in Category IV, the Department requests public comment on any perceived benefits and drawbacks to consolidating these two heat shield paragraphs under Category XIII.

Spacecraft Propulsion

The Department proposes to relocate the spacecraft propulsion system paragraphs in USML Category XV from paragraphs (e)(11) and (12) to new paragraph (d), consistent with its intent to limit the scope of paragraph (e) to parts, components, accessories, and attachments. Doing so would make USML Category XV consistent with USML Category IV in providing a dedicated paragraph (d) for propulsion systems.

The Department proposes to relocate the nuclear and electric propulsion and power assemblies described in paragraph (e)(11)(i) through (iii) to paragraphs (d)(1) through (3) and modify the control text for simplicity and consistency with the current state of

technology by replacing the reference to “space-based systems” with the more specific “propulsion systems” and “power systems.” Similar systems designed for applications other than spacecraft are excluded by the proposed text of paragraph (d).

The Department proposes to move ion propulsion systems described in paragraph (e)(11)(iv) to paragraph (d)(4), adjust upward the thrust and specific impulse criteria, and adjust upward the input power criterion, thereby removing from the USML certain systems the Department assesses no longer provide a critical military or intelligence advantage.

The Department proposes to move the non-nuclear propulsion assemblies described in paragraph (e)(12) to paragraph (d)(5) and to modify the control text for consistency in construction and clarity of the control text by replacing the term “thrusters” and the accompanying examples with the term “non-nuclear propulsion systems,” with no change to the scope of the control.

Spacecraft Parts, Components, Accessories, and Attachments

The Department proposes two minor revisions to the text of USML Category XV(e). First, the Department proposes to remove the reference to equipment and systems, reflecting the proposed movement of those articles to a paragraph dedicated to systems and equipment. Second, the Department proposes to clarify the scope of paragraph (e) by limiting the parts, components, accessories, and attachments described therein to those that are for spacecraft.

Antennas

The Department proposes to narrow the scope of USML Category XV(e)(1) by adding a minimum operational frequency, thereby removing from the USML certain antennas the Department assesses no longer provide a critical military or intelligence advantage. Additionally, the Department proposes minor modifications to paragraphs (e)(1)(i) through (iv) for clarity and consistency within the control text.

Optics

The Department proposes multiple modifications to USML Category XV(e)(2). First, the Department proposes to remove “space-qualified” because the Department assesses the underlying technology provides a critical military or intelligence advantage regardless of the environment in which the optics are used. Second, the Department proposes to modify the subordinate paragraphs to

better describe optics that are not circular in nature by replacing the requirement for aperture dimension in paragraph (e)(2)(i) with an individual light collecting area threshold. Third, the Department proposes to replace paragraph (e)(2)(ii) with regulatory text that describes passive optics to complement the active optics described in paragraph (e)(2)(i). Additionally, the Department proposes to add paragraph (e)(2)(iii) to describe X-ray optics with performance capability criteria for effective collecting area and angular resolution.

Focal Plane Arrays

USML Category XV(e)(3) describes certain space-qualified focal plane arrays. The Department proposes to remove the parts control for readout integrated circuits, as integrated circuits specially designed for defense articles are already described in USML Category XI(c). The Department also proposes to replace the “space-qualified” criterion with a specially designed criterion, for the same reasons it proposes adjusting similar criteria for other space-qualified articles described in Category XV.

Optical Bench Assemblies

The Department proposes minor modifications to USML Category XV(e)(6) for consistency in construction of the control text, with no intended change in the scope of control.

Directed Energy Systems

The Department proposes to remove and reserve USML Category XV(e)(7). Kinetic energy weapon systems and directed energy weapon systems are already described in Categories II and XVIII, respectively, and each includes a catch-all control. Moreover, the order of review at § 120.11 provides that those control paragraphs each supersede Category XV(e)(7) due to their SME designations. This proposed revision is also consistent with the Department’s intent to regulate space systems the same way it regulates ground-based systems.

Control Moment Gyroscopes

The Department proposes to remove certain gyroscopes, which no longer provide a critical military or intelligence advantage, from USML Category XV(e)(13) by adding additional performance criteria on the minimum angular momentum and torque provided by the gyroscopes.

Monolithic Microwave Integrated Circuits (MMICs)

As described elsewhere in this rule, the Department proposes to remove and

reserve USML Category XV(e)(14) and to modify Category XI(c)(4) so all MMICs are described therein, with no change to the scope of controls on MMICs.

Oscillators for Radar

The Department proposes to modify USML Category XV(e)(15) by clarifying the scope and replacing the “space qualified” criterion with a “specially designed” criterion for the same reasons the Department proposes adjusting similar criteria for other space-qualified articles described in Category XV. The Department further proposes to clarify that paragraph (e)(15) describes oscillators specially designed for either spacecraft described in paragraph (a) or payloads described in paragraph (h)(17), with no change in the scope of the control.

Star Trackers

The Department proposes to modify USML Category XV(e)(16) by removing the “space qualified” requirement. The Department assesses that the performance requirements currently specified provide a critical military or intelligence advantage regardless of the environment in which they are used.

Primary, Secondary, or Hosted Payloads

The Department proposes to modify USML Category XV(e)(17) for simplicity and consistency of construction of the control text by replacing the current term “primary, secondary, or hosted payload,” which describes any payload in the complete set of all payloads, with the term “payload.”

Notes to USML Category XV(e)(17)

In USML Category XV, note 1 to paragraph (e)(17) defines different types of payloads. The Department proposes to relocate these to § 121.0, thereby facilitating the deletion of the note, and to revise the definitions for clarity and consistency in construction of the control text. The first portion of note 2 to paragraph (e)(17) covers the integration of hosted payloads described in paragraph (e)(17) into spacecraft subject to the EAR by noting the export jurisdiction of the spacecraft does not change based on the hosted payload’s incorporation, while the second portion of the note excludes certain payloads for the James Webb Space Telescope. The Department proposes to move the first portion of the note to the proposed exemption at § 126.8(d). The Department proposes to exclude the James Webb Space Telescope from the USML via the definition for “excluded NASA spacecraft” and the text of USML Category XV(a). Thus, the Department proposes to delete note 2 as well.

Payloads Developed with Department of Defense Funding

The Department proposes to modify USML Category XV(e)(18) for consistency in construction of the control text. Additionally, the Department proposes to expand the control by removing the “secondary or hosted” qualifier so all payloads funded by the Department of Defense (DoD), and specially designed parts and components therefor, are described therein.

Note to USML Category XV(e)(19): The Department proposes to remove the note to USML Category XV(e)(19) because the proposed § 121.0 definitions replace the note.

Addition of USML Category XV(e)(22)

The Department proposes to add a new paragraph at USML Category XV(e)(22) for technologies that facilitate the signature reduction of in-orbit spacecraft observations. The proposed regulatory text reflects the Department’s intent to exclude technology used only to minimize light pollution, as seen from the ground.

Notes USML Category XV(e): The Department proposes to eliminate note 1 to USML Category XV(e), as the jurisdiction of articles not described in paragraph (e) is already addressed in the order of review at § 120.11. Note 2 to paragraph (e) delegates the licensing of articles described in paragraph (e) when integrated into a spacecraft subject to the EAR. The Department proposes a licensing exemption in § 126.8 to codify this exemption and to facilitate the deletion of note 2. The Department also proposes to delete notes 3 and 4 to paragraph (e), as the proposed revisions to USML Category XV remove all but one reference to space-qualified and the Department assesses notes 3 and 4 are no longer required to identify space-qualified atomic clocks.

Technical Data and Defense Services

The Department proposes to modify USML Category XV(f) by incorporating guidance currently provided in notes 1 through 3 to paragraph (f), which is not already included in the definition of technical data at § 120.33 or the proposed definition of “spacecraft housekeeping data and output at § 121.0.” The Department also proposes to delete the explanatory information regarding defense services found in the control text, as it assesses such information does not provide substantial guidance beyond the order of review provided at § 120.11 and the USML text, and similar redundancy is not provided in other USML Categories.

The Department is also considering, and requests public comment on, whether to retain the broad exclusion

for future sensor outputs in its proposed definition of “spacecraft housekeeping data and output” at § 121.0. The Department assesses that such information may no longer need to be transmitted in unencrypted form due to advances in encryption technology size, weight, power consumption, performance capability, and cost and launch costs. Additionally, the Department updated § 120.54(a)(5) in a prior rulemaking to exclude the sending, taking, or storing of technical data from the definition of “export,” when secured using end-to-end encryption in certain circumstances. In considering whether and how to narrow that exclusion, the Department is also considering reasonable safe harbor provisions for systems that previously entered development, to minimize disruptions to existing projects.

Consideration of Prior Public Comments on USML Category XV

As discussed earlier in this proposed rule, twenty-five parties filed comments requesting changes in response to 84 FR 8486 (RIN 1400–AE73), which were reviewed and considered by the Department, in consultation with other U.S. Government departments and agencies. A summary of the comments related to USML Category XV follows:

Seven commenting parties recommended USML Category XV be revised to clarify it does not describe either the Lunar Gateway or unmanned probes used in conjunction with the Lunar Gateway. As described in this rule, the Department proposes a licensing exemption in § 126.8 to support Lunar Gateway.

One commenting party recommended USML Category XV be revised to clarify it does not describe celestial landers. The Department’s proposed spacecraft definition in § 121.0 provides related exclusions commensurate with the Department’s intent to regulate articles based on technology employed, not intended location of use.

Two commenting parties recommended the itemization of NASA programs and their respective jurisdictions and classifications. The Department declines to do so, as NASA and the entities supporting NASA programs are responsible for their respective export compliance analyses. The Department further notes that programs, in and of themselves, are not subject to export controls; rather, the technologies involved in the programs are subject to export controls.

One commenting party recommended narrowing USML Category XV(a)(2) controls on spacecraft that detect certain moving objects by removing the term

“space objects.” The Department declines to do so and proposes updates to clarify and reduce the scope of this control consistent with U.S. national security and foreign policy equities. Another commenting party recommended an exception for NASA programs that utilize technology described in USML Category XV(a)(2). Following coordination with NASA, the Department proposes a list of “excluded NASA spacecraft” in § 121.0 and a licensing exemption for certain NASA spacecraft at § 126.8(a). The Department intends these tools to evolve as NASA programs evolve.

One commenting party recommended the term “constellation” be deleted from USML Category XV(a)(4) to account for commercial communication satellites that might otherwise be described therein. The Department proposes modifications to clarify the scope of the control.

Seven commenting parties recommended changes to USML Category XV(a)(7), including using different measurement thresholds and excluding non-Earth-pointing optical telescopes. The Department proposes a change to the ground sample distance requirement for paragraph (a)(7)(ii) but assesses the technology described in paragraph (a)(7) is fundamentally the same regardless of a spacecraft’s orientation. As the jurisdiction of technical data and services generally follow the jurisdiction of the defense article they are directly related to, the Department thus declines to exclude non-Earth-pointing telescopes. The Department proposes to facilitate certain space-related fundamental research using defense articles through licensing exemptions in § 126.8(b) and (c), and requests public comment on additional ways to consider facilitating activities related to space-based scientific telescopes while accounting for U.S. national security and foreign policy equities.

One commenting party recommended excluding space vehicles that incorporate USML Category XV(a)(8) technology and can land on celestial bodies. The Department declines to do so, consistent with its intent to regulate technology in space in the same manner as it regulates it on Earth.

One commenting party recommended an exception for commercial satellites otherwise described in USML Category XV(a)(10), asserting that collision-avoidance technology will likely be required for all spacecraft once large communication constellations are in orbit. The Department agrees, and in response proposes to delete paragraph (a)(10) in its entirety.

Three commenting parties recommended adding a note to USML Category XV(a)(11) to clarify propulsion systems for such spacecraft are described elsewhere in Category XV. The Department assesses this is unnecessary as the paragraph currently provides specific reference to propulsion systems described in Categories IV and XV.

One commenting party recommended the exclusion of crewed suborbital vehicles used for space tourism from USML Category XV(a)(11). The Department notes that doing so would also exclude the technical data and services directly related to the vehicles, and instead proposes a licensing exemption in § 126.8(c). This approach maintains the technology on the USML that provides a critical military or intelligence advantage, while exempting the licensing requirements for certain activities directly related to those technologies.

Seven commenting parties made recommendations regarding the inspection, surveillance, and servicing spacecraft described in USML Category XV(a)(12), including deletion of the control, defining the term “service,” excluding commercial spacecraft, and expanding the docking systems excluded by the related note. The Department proposes to revise the “inspection and surveillance” control in paragraph (a)(12), remove the “servicing” control, move the “docking” control into a new USML Category XV(a)(14). The Department further proposes to clarify the intended scope of paragraph (a)(14) by removing references to specific docking standards and focusing on the technology of interest, namely the ability to grapple or dock with another spacecraft using certain means.

One commenting party requested the Department resolve a perceived inconsistency between the notes to paragraphs (a) and (e)(17) of USML Category XV to make clear a spacecraft that incorporates a classified payload remains subject to the EAR unless the overall spacecraft is classified for national security purposes. Category XV(a)(13) describes spacecraft that “. . . contain classified . . . hardware.” Note 1 to paragraph (a) stipulates EAR spacecraft remain subject to the EAR “. . . even if defense articles described on the USML are incorporated therein, except when such incorporation results in a spacecraft described in this paragraph.” Thus, this text provides that incorporation of a classified payload would render any spacecraft a defense article. However, note 2 to paragraph (e)(17) provides that a hosted payload

performing a function described in paragraph (a) does not alter the jurisdiction of the satellite it is incorporated into.

The Department understands the perceived discrepancy but notes that hosted payloads that are classified do not “perform a function” described in paragraph (a). Thus, the Department assesses there is no conflict between the two paragraphs. As the intent of note 2 to paragraph (e)(17) is to facilitate hosted DoD payloads on spacecraft otherwise subject to the EAR, the Department proposes to modify paragraph (a)(13) to exclude spacecraft described solely because of the inclusion of a hosted payload that is classified by DoD for national security reasons.

Three commenting parties recommended two specific changes to USML Category XV(b): the exclusion of superficial access to training simulators and that the text “space vehicles or other vehicles” be added to the note to paragraph (b). The Department declines to add the term “superficial,” as it could create ambiguity and proposes to delete the note to paragraph (b), as the guidance it contains is already addressed through the “specially designed” guidance at § 120.41 and the “order of review” guidance at § 120.11.

One commenting party requested clarification of the controls on optical and radar systems within the context of their use in either Earth-based or space-based platforms. In response, the Department proposes to move USML Category XV systems and equipment to paragraph (c) and adjust the text of paragraphs (c) and (e) to require articles to be for spacecraft. The Department further notes that certain radar and optical system controls are also located in USML Categories XI and XII, respectively.

Three commenting parties recommended either removing USML Category XV(e)(1) or updating the technical thresholds to remove antennas used for commercial applications. The Department proposes changes to the performance parameters listed in paragraph (e)(1) and notes the antennas described on the USML are critical elements for spacecraft described in Category XV and provide a critical military or intelligence advantage. However, the Department requests public comment on any civil applications it should consider for inclusion in its proposed exemption at § 126.8(b).

One commenting party recommended revising USML Category XV(e)(2) to both avoid controlling optics based solely on aperture size and to exclude

non-Earth observing instruments. The Department assesses aperture size remains an important criterion and proposes changes to paragraph (e)(2) to remove references to specific geometries, as some apertures are not circular. Additionally, the Department proposes to modify paragraph (a)(7), as detailed in the preamble of this rule under the heading “Spacecraft with Remote Sensing Capabilities.” Since paragraph (e)(2) describes articles specially designed for satellites described in paragraph (a), the proposed changes to paragraph (a)(7) are directly applicable.

For USML Category XV(e)(5), one commenting party recommended providing control parameters for active vibration suppression systems, distinguishing between vibration suppression and image stabilization, and clarifying that commercial systems that subsequently become space-qualified are not subject to the ITAR. The Department declines to narrow this paragraph, or to draw a distinction between vibration suppression and image stabilization. Also, note 3 to paragraph (e) notes that commercial systems that are subsequently space-qualified are subject to the ITAR. Separately, the Department proposes to eliminate the criterion that active vibration suppression systems be space-qualified for reasons discussed elsewhere in this rule.

Six commenting parties recommended electric propulsion, as described in USML Category XV(e)(11), be either removed from the USML or revised to include a higher thrust threshold. The Department proposes to adjust upward the thrust and specific impulse criteria (from 300 to 400 milli-Newtons, and from 1,500 to 1,900 seconds, respectively), and to remove the input power criterion, thereby removing from the USML certain systems the Department assesses no longer provide a critical military or intelligence advantage.

Four commenting parties recommended removal of bi-propellant and monopropellant thrusters in USML Category XV(e)(12) or, at a minimum, a distinction between thrusters used for spacecraft and thrusters used for rockets. The Department declines to remove thrusters from the USML, as they continue to provide a critical military or intelligence advantage and proposes updates to the text of Categories IV and XV to clearly delineate between those propulsion systems for use with rockets and those for spacecraft.

Four commenting parties recommended removing star trackers

from USML Category XV(e)(16) or, at a minimum, updating the control with performance parameters based on technology advancements. The Department declines to remove star trackers from the USML as they continue to provide a critical military or intelligence advantage and welcomes public comments substantiating a recommended change in performance parameters.

One commenting party recommended removing detachable equipment described in USML Category XV(e)(20), asserting such technologies are an important element of human space exploration. The Department acknowledges the significance of this technology to both human space exploration and to sectors not related to human spaceflight. The Department proposes to address this concern via the combination of definitions, revisions, exclusions, and licensing exemptions proposed in this rule.

Two commenting parties recommended adding a note to USML Category XV(f) to exclude from “defense services” the launch of a foreign payload for scientific or commercial research on a space launch vehicle, spaceplane, or spacecraft. The Department notes the national origin of an article is immaterial to the definition of defense services and that the launch provider is not best positioned to determine the scientific, commercial, or military nature of a foreign payload. However, the Department proposes two exemptions supporting fundamental research at § 126.8(b) and (c).

Four commenting parties recommended excluding from USML Category XV(f) information regarding general foreign spaceport requirements related to hangar size and building requirements, apron and runway width and length, ground support equipment, vehicle processing and fueling, nitrous oxide storage and loading, chemical handling and storage, and other basic facility-related information. The Department assesses the scope of the request is too broad for a discrete exclusion from the USML. Instead, each of these articles is best assessed through the order of review at § 120.11 and the technical data definition at § 120.33.

Two commenting parties recommended excluding foreign space flight participant activities related to scientific or commercial research or foreign payload management or observation from USML Category XV(f). The Department assesses the underlying concern is adequately addressed through the order of review at § 120.11 and the proposed exclusions for human spaceflight preparations in this rule.

Two commenting parties recommended the exclusion of certain mission analyses from USML Category XV(f), such as load analyses and three-body trajectory planning tools. The Department assesses the order of review at § 120.11 in combination with the regulatory text of the USML, addresses this comment.

One commenting party recommended USML Category XV(f) be amended to remove Defense Technology Security Administration monitoring conditions for a foreign party’s integration of an EAR-controlled satellite to a launch vehicle using a standard deployer or separation mechanism, where no U.S. person is present during the integration. The Department notes no such monitoring conditions exist on the USML. The referenced monitoring conditions, required under Public Law 105–261, are outside the scope of this rulemaking.

One commenting party recommended the expansion of note 1 to USML Category XV(f) to exclude technical data directly related to articles integrated into a satellite or spacecraft instead of just satellites. The Department proposes to delete note 1 to paragraph (f) as described in this rule.

Two commenting parties recommended excluding from the ITAR both the payloads brought into the cabin of a crewed space vehicle and the monitoring and managing of those payloads. The Department assesses the order of review at § 120.41 adequately addresses most of the scenarios associated with this comment. Furthermore, the Department proposes to define “spacecraft” in § 121.0 which, in its current proposed form, excludes “any article designed to operate exclusively inside a spacecraft.” Moreover, unless the crewed spacecraft is described in paragraph (a), it also would not be a defense article described in Category XV. As a result, the Department assesses a payload transported in the cabin of a crewed space vehicle would not likely be described on the USML as a discrete spacecraft or as a payload associated with the spacecraft. However, if the payload in the cabin were otherwise described on the USML, it would remain a defense article.

One commenting party recommended expanding note 3 to paragraph (f) of USML Category XV to clarify satellite imagery is neither subject to the ITAR or EAR when the data is collected from a NOAA-licensed Earth imaging satellite. The Department declines to do so and assesses the order of review at § 120.11 and technical data definition at § 120.33, in combination with the

regulatory text of the USML, address this comment.

Six commenting parties recommended detailed definitions for space launch vehicles, rockets, and missiles, as well as a distinction between space vehicles and space launch vehicles. The Department has proposed a detailed definition of spacecraft. However, the Department declines to define rockets, space launch vehicles, and missiles within the ITAR, and notes that common dictionary definitions of these terms exist.

Four commenting parties recommended a note be added to Categories IV and XV to clarify crewed space vehicles are not subject to MT control. The Department declines to do so. Any crewed spacecraft on the USML would likely be described in paragraph (a) of USML Category XV; however, none of the subordinate paragraphs of (a) are designated as MT or proposed for designation as MT by this rule. As such, the Department assesses adding an exclusionary note is unnecessary.

One commenting party recommended excluding crewed or crew-tended systems from USML Category XV. While certain crewed platforms are excluded within the regulation and the proposals in this rule, the Department assesses the presence of crew members, by itself, is not a useful criterion for determining whether a spacecraft warrants designation as a defense article as provided at § 120.3.

One commenting party recommended excluding defense articles and defense services described by USML Category XV but fabricated only for fundamental research purposes. The Department notes an exclusion for fundamental research is currently provided in § 120.34(a)(8). However, that exclusion from the technical data definition is limited to certain basic and applied research conducted at specific institutions in the United States. Extending those provisions to the design and development of a defense article would be incompatible with both the current exclusion and the definition of defense service at § 120.32. However, the Department proposes to exempt certain suborbital and on-orbit research in § 126.8, and requests public comment on the perceived risks and benefits of doing so.

One commenting party recommended an exemption allowing DDTC registered persons to ship defense articles from the United States to international waters. The Department notes this is an export under the ITAR, and a broad exemption of this nature would present a proliferation risk. The Department asks for public comment on any specific,

narrowly-tailored scenarios for the Department to consider creating an exemption for, that would provide significant benefit to the U.S. space industry.

One commenting party recommended an exemption for the transfer of technical data and defense services that occur outside the atmosphere. The Department declines to do so, as a broad exemption of this nature would present a proliferation risk.

Two commenting parties recommended some or all technology and information related to commercial satellite servicing be removed from the USML. The Department declines to do so and assesses the order of review at § 120.11 and technical data definition at § 120.33, in combination with the regulatory text of the USML, address this comment.

One commenting party asserted industry did not see a cost benefit to prior export control reforms and future rulemaking efforts should minimize overlapping authorizations for a given program. The Department welcomes specific recommendations to address this perception, and notes multiple agencies have jurisdiction over separate aspects of space programs, given their mandates and delegated authorities.

Two commenting parties recommended changes to the MTCR and MT designations within the USML. Specifically, they recommended updating the MTCR annex, removing “specially designed” and other non-technical modifiers from MT descriptions and adding specific references to the MTCR annex. The Department declines to do so and notes the USML is not determinative in identifying whether a specific article is subject to the MTCR, and that a version of the MTCR Annex was previously removed from the ITAR. MT designation on the USML support the U.S. implementation of its commitments under the MTCR.

Two commenting parties recommended the definition of “export” at § 120.50 be revised to exclude encrypted data. The Department previously addressed this issue through § 120.54(a)(5), which excludes the sending, taking, or storing of technical data from the definition of “export” at § 120.50 when secured using end-to-end encryption in certain circumstances. “End-to-end encryption” is defined at § 120.54(b)(1), and further information on this topic can be found throughout § 120.54, which should be consulted to prevent unauthorized exports of technical data.

Part 126 Licensing Exemptions

The Department proposes to exempt certain articles that continue to warrant description on the USML from ITAR licensing requirements in certain circumstances. The Department outlines these exemptions in the proposed additions to part 126. The proposed changes, while intended to be self-explanatory, were discussed in detail at the beginning of this rule. The Department requests comment on whether the provisions are clear or whether they might benefit from further explanation. The practical effect of these proposed changes will be their continued regulation as defense articles, along with directly related technical data and defense services, while allowing for increased coordination and collaboration without a license for certain pre-approved activities.

Updating of Licenses and Agreements

As part of the Department’s USML modernization efforts, the USML classification for some defense articles is changing, which will eventually require exporters to update their records to reflect the new classification. Consistent with prior revisions of USML categories, additional guidance that address specific licensing scenarios will be provided on DDTC’s website.

Request for Comments

Comments Requested

Consistent with its ongoing USML review process, the Department is requesting public comments on the revisions described in this rulemaking. In particular, the Department is requesting comment on ways to streamline the descriptions and criteria on the USML for these items, so that it may continue to protect U.S. national security and foreign policy interests while benefitting U.S. industry and international partners. Describing items more precisely could lower administrative burdens and regulatory compliance costs and present an opportunity for increased exports, thus bolstering the U.S. commercial sector and industrial base.

The Department encourages the public to provide comments directly related to this proposed rule and responsive to the questions presented. To facilitate timely review and assessment, comments should be provided in a concise sentence or paragraph, followed by supporting explanatory paragraphs and examples, with each distinct comment treated separately (as opposed to multiple comments in one paragraph or section). In addition to questions presented

elsewhere in the preamble, the Department requests comments focused on the following questions:

1. Are there articles, services, or technical data closely related to these revisions that warrant ITAR control, but are currently either not described on the USML, or not described with sufficient clarity? If so, please provide examples and a concise explanation.

2. Is the technology required to refuel a space launch vehicle in orbit distinguishable from the technology required to refuel a spacecraft? If so, what characteristics, functions, or performance criteria may differentiate the two technologies?

3. Are there specific articles, services, or technical data described on the USML following these revisions that are also described by another existing paragraph on the USML? If so, please identify the relevant paragraph(s), and provide a concise explanation.

4. Are there specific articles, services, or technical data described on the USML following these revisions that are, or have previously been, in normal commercial use, that were previously transitioned to another agency’s jurisdiction, or that were previously determined not to be subject to the ITAR via a Commodity Jurisdiction determination? If so, please include supporting documentation.

5. Are there specific articles, services, or technical data described on the USML following these revisions for which civil use is proposed, intended, or anticipated in the next five years? Please include supporting documentation and a point of contact familiar with the details.

6. Are there specific functions, performance levels, or characteristics related to these revisions that could better:

a. Distinguish between the articles that do, and do not, warrant ITAR control; or

b. Delineate the criteria for control, in lieu of using the defined term ‘specially designed?’

7. Are these revisions unclear in any way, or can they be more concisely stated? For example, please identify any:

a. Terms that you find ambiguous in definition or context; or

b. Constructions or regulatory text that varies from existing USML paragraphs.

8. Are there other technical issues directly related to these paragraphs which you believe the Department should address in future rulemaking?

9. What technical parameters should the Department consider for differentiating between star trackers for

civil use and star trackers that provide a critical military or intelligence advantage?

10. Is there a critical technological difference between thermal protection systems designed for entry of Earth's atmosphere as opposed to entry of another planet's atmosphere?

11. What benefits, drawbacks, and other considerations should the Department take into account in considering whether and how to consolidate the two thermal protection system paragraphs in Categories IV and XV into one paragraph in USML Category XIII?

12. Are there civil spacecraft that would be described by the newly proposed Category XV(a)(16)? If so, are there technical criteria that may differentiate them from spacecraft the Department intends to describe, that rapidly deploy multiple spacecraft into multiple different orbits?

13. Are there any specific examples in which including "air-dropped" in the proposed "bomb" definition appears to release a military munition from the USML?

14. How could the proposed definition of range for USML Category IV be adjusted to apply more broadly across the USML while remaining scope neutral for Category IV?

15. What other means should the Department consider to differentiate surveillance spacecraft from space situational awareness, cooperative docking, and orbital debris mitigation spacecraft?

16. Is there potential overlap between the proposed seeker systems control in Category IV and other USML control paragraphs, such as USML Category IV(e)(1)(ii) or XII(a)(6), (c)(3) or (4), or (d).

17. Are additional performance requirements (e.g., delta-v or propellant volume) needed in the regulatory text for Category XV(a)(16) to avoid controlling commercial satellites that don't provide a critical military or intelligence advantage?

Comment Submission Instructions

Include the Regulatory Information Number (RIN) (1400–AE73) or agency name and docket number for all submissions related to this proposed rule. Submission of comments to www.regulations.gov is preferred. Commenters are cautioned not to include proprietary, export-controlled, or other sensitive information that they are not comfortable making public in their comments. If such information would provide useful insight to the comment, (1) assemble that information in a separate document with proprietary

markings; (2) include "Proprietary supplement on file with: [provide POC]" as the first line in the body of the email submission; (3) submit the public portion of the comment via email; and (4) call DDTC at (202) 663–1282 to coordinate submission of the proprietary supplement.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the rulemaking requirements of section 553 of the Administrative Procedure Act (APA) pursuant to section 553(a)(1) as a military or foreign affairs function of the United States. Nevertheless, and without prejudice to this determination, the Department has elected to seek public comment on this proposed rule.

Regulatory Flexibility Act

Since this proposed rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Orders 12866, as amended by Executive Orders 13563 and 14094, 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, distributed 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. The Department specifically welcomes public comment on the impact, including costs and benefits, of this proposed rule. After review by the Office of Management and Budget (OMB), this proposed rule has been deemed a significant regulatory action.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Parts 120, 121, and 126

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above and under the authority of 22 U.S.C. 2778, the Department of State proposes to amend title 22, chapter I, subchapter M, parts 120, 121, and 126 as follows:

PART 120—PURPOSE AND DEFINITIONS

- 1. The authority citation for part 120 continues to read as follows:

Authority: 22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

- 2. Amend § 120.33 by revising paragraph (b) to read as follows:

§ 120.33 Technical data.

* * * * *

(b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in § 120.34 or spacecraft housekeeping data and output as defined in § 121.1 of this subchapter. It also does not include basic marketing information on function or purpose or

general system descriptions of defense articles.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 3. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 4. Revise § 121.0 to read as follows:

§ 121.0 United States Munitions List descriptions and definitions.

For a description of the U.S. Munitions List (USML) and its designations, including the use of asterisks and the parenthetical “(MT)”, see § 120.10 of this subchapter. As used in this part:

Amateur rocket means an unmanned rocket that:

- (1) Is made of paper, wood, fiberglass, or plastic, and does not contain any substantial metal parts;
- (2) Does not carry a payload designed to be flammable, explosive, or harmful to humans or property;
- (3) Is propelled by one or more motors having a combined total impulse of 40,960 Newton-seconds or less;
- (4) Has a capacity for no more than five (5) pounds of propellant;
- (5) Has no active controls; and
- (6) Cannot reach an altitude greater than 150 km above Earth’s surface.

Amateur rocket motor means a rocket motor or engine containing no more than 5 pounds of propellant, that is certified for U.S. consumer use as described in National Fire Protection Association Code 1125.

Bomb means an air-dropped munition, guided or unguided, without propulsion.

CCL. See Commerce Control List in 15 CFR part 772.

Commerce Control List. See 15 CFR part 772.

Department of Defense means U.S. Department of Defense.

DoD. See Department of Defense.

EAR. See Export Administration Regulations at 15 CFR parts 730 through 774.

ECCN. See Export Control Classification Number in 15 CFR part 772.

Excluded NASA spacecraft means:

- (1) The International Space Station (ISS); and specially designed (as defined in the EAR) parts and components therefor; and
- (2) The James Webb Space Telescope (JWST).

Export Administration Regulations means 15 CFR parts 730 through 774.

Export Control Classification Number. See 15 CFR part 772.

Ground sample distance means a calibrated measurement of spatial resolution for ground imagery taken from the periapsis of an orbit and recorded as the ground distance between the center points of adjacent pixels.

GSD. See Ground sample distance.

Hosted payload means equipment that uses excess spacecraft capacity, to accommodate an independent mission of opportunity but that neither operates as an independent spacecraft nor dictates the operation or jurisdiction of the host spacecraft.

Human spaceflight preparations means activities and information directly related to, or required for:

- (1) Spacecraft access, ingress, and egress, including the operation of all spacecraft doors, hatches, and airlocks;
- (2) Physiological training (e.g., human-rated centrifuge training or parabolic flights, pressure suit or spacesuit training/operation);
- (3) Medical evaluation or assessment of the spaceflight passenger or participant;
- (4) Training for and operation by the passenger or participant of health and safety related hardware (e.g., seating, environmental control and life support, hygiene facilities, food preparation, exercise equipment, fire suppression, communications equipment, safety-related clothing or headgear) or emergency procedures;
- (5) Viewing of the interior and exterior of the spacecraft or terrestrial mock-ups;
- (6) Observing spacecraft operations (e.g., pre-flight checks, landing, in-flight status);
- (7) Training to connect to or operate equipment used for purposes other than operating the spacecraft; or
- (8) Donning, wearing, or utilizing the passenger’s or participant’s flight suit, pressure suit, or spacesuit, and personal equipment.

Loitering munition means any non-stationary platform specially designed for integration with non-releasable munitions and capable of delayed target engagement.

Mine means stationary or floating munitions triggered by proximity, pressure, contact, timer, or remote control.

Payload (in the context of USML Category IV in § 121.1) means mass delivered to a pre-determined position and not used to maintain a vehicle’s flight.

Primary payload means equipment designed to accomplish the prime mission function of a spacecraft and

may operate independently from a secondary payload.

Range means:

(1) In the context of USML Category IV in § 121.1, the distance achievable by a vehicle as measured by the projection of its trajectory over the surface of the Earth, assuming a full complement of fuel, the International Civil Aviation Organization (ICAO) standard atmosphere, no wind, and no operational constraints.

(2) In other USML contexts, is either defined locally or is not explicitly defined in this subchapter.

Real-time means the time required for a system to process, analyze, and respond to input is at least as fast as the rate at which it can receive input.

Secondary payload means equipment integrated into a spacecraft that may operate separately from the primary payload.

Spacecraft means vehicles, satellites, probes, and craft designed to operate at least 100 km above the mean sea level of Earth, excluding:

- (1) Any article designed to operate exclusively inside a spacecraft;
- (2) Any article designed to operate exclusively in the immediate proximity of a spacecraft for a limited time (e.g., during extra vehicular activities (EVAs));
- (3) Any article designed to operate exclusively under or on the surface of a celestial body, or within the atmosphere of a celestial body;
- (4) Any article launched suborbitally or atmospherically from the surface or atmosphere of a celestial body other than Earth; and
- (5) Defense articles described in USML Category IV in § 121.1.

Spacecraft bus means the support infrastructure and interface for the spacecraft.

Spacecraft housekeeping data and output means information about the health, operational status, or measurements or function of, or raw sensor output from, a spacecraft, a spacecraft payload, or its associated subsystems or components. Examples of such information include:

- (1) System, hardware, component configuration, and operation status information pertaining to temperatures, pressures, power, currents, voltages, and battery charges;
- (2) Spacecraft or payload orientation or position information, such as state vector or ephemeris information;
- (3) Payload raw mission or science output, such as images, spectra, particle measurements, or field measurements;
- (4) Command responses;
- (5) Timing information; and
- (6) Link budget data.

Spacecraft payload means equipment attached to the spacecraft bus that performs a particular mission in space (e.g., communications, observation, science).

Spectral bandwidth means the smallest difference in wavelength (i.e., $\Delta\lambda$) that can be distinguished at full width and half maximum (FWHM) of wavelength λ .

■ 5. Amend § 121.1 as follows:

■ a. Revise Category IV.

■ b. In Category VI, revise paragraphs (f)(6) and (7).

■ c. In Category VII:

■ i. Revise paragraphs (g)(2) and (13) and (g)(14)(iii); and

■ ii. Add paragraph (g)(15).

■ d. In Category VIII, revise paragraph (h)(6).

■ e. In Category XI, revise paragraphs (c)(4) and (15).

■ f. In Category XIII, revise paragraph (j).

■ g. Revise Category XV.

■ h. In Category XX, revise paragraph (c).

The revisions and addition read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category IV—Launch Vehicles, Rocket Systems, and Other Weapons (e.g., Bombs, Torpedoes, and Mines)

* (a) Rockets, space launch vehicles (SLVs), missiles, bombs, torpedoes, depth charges, mines, and grenades, as follows:

(1) Rockets, SLVs, and missiles, capable of delivering a payload of at least 500 kg to a range of at least 300 km (MT);

(2) Rockets, SLVs, and missiles, capable of delivering a payload of less than 500 kg to a range of at least 300 km (MT);

(3) Missiles and rockets for man-portable air defense systems (MANPADS);

(4) Missiles and rockets for anti-armor systems;

(5) Rockets, SLVs, and missiles, not otherwise described in paragraphs (a)(1) through (4) of USML Category IV, excluding amateur rockets;

(6) Bombs;

(7) Torpedoes;

(8) Depth charges;

(9) Land mines (e.g., terrain shaping obstacles (TSOs) and area denial devices (ADDs));

(10) Anti-aircraft mines;

(11) Naval mines;

(12) Hand grenades that are designed to be lethal or destructive (e.g., fragmentation, concussive, incendiary, chemical, or biological);

(13) Loitering munitions not otherwise described in paragraphs (a)(1) through (5) of USML Category IV;

(14) Kinetic kill vehicles; and specially designed parts and components therefor;

(15) Post-boost vehicles (PBV), including ballistic missile equipment sections (MT);

(16) Hypersonic glide vehicles; and specially designed parts and components therefor (MT); and

(17) Unmanned atmospheric re-entry vehicles not otherwise described in USML Category IV or XV; and specially designed parts and components therefor (MT);

* (b) Launch systems and equipment, as follows:

(1) Systems and equipment for launching articles described in paragraph (a)(1) or (2) of USML Category IV (MT) and specially designed parts and components therefor; and

(2) Systems and equipment for launching articles described within paragraphs (a)(3) through (14) or (a)(16) and (17) of USML Category IV and specially designed parts and components therefor.

Note 1 to paragraph (b): For accessories, attachments, and associated equipment, including production, testing, and inspection equipment and tooling, related to articles described in this paragraph (b) that are specially designed for articles described in paragraph (a) of USML Category XX, see paragraph (c) of USML Category XX.

(c) Apparatus and devices specially designed for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles enumerated in paragraphs (a) and (b) of USML Category IV (MT for those systems enumerated in paragraphs (a)(1) and (2) and (b)(1) of USML Category IV).

Note 1 to paragraph (c): This paragraph (c) includes specialized handling equipment (transporters, cranes, and lifts) specially designed to handle articles enumerated in paragraphs (a) and (b) of USML Category IV for preparation and launch from fixed and mobile sites. The equipment in this paragraph also includes specially designed robots, robot controllers, and robot end-effectors, and liquid propellant tanks specially designed for the on-launch site storage or handling of the propellants controlled in USML Category V, CCL ECCNs 1C011, 1C111, and 1C608, or other liquid propellants used in the systems enumerated in paragraph (a)(1), (2), or (5) of USML Category IV. This paragraph (c) does not describe liquid propellant tanks designed solely for commercial transportation and storage.

* (d) Propulsion systems not otherwise described in USML Category XV or XIX, as follows:

(1) Individual rocket stages for the articles enumerated in paragraph (a)(1), (2), or (5) of USML Category IV except

as described in paragraph (d)(2) or (3) of USML Category IV (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV);

(2) Rocket motors and engines having a total impulse capacity equal to or greater than 1.1×10^6 N-s (MT);

(3) Rocket motors and engines having a total impulse capacity equal to or greater than 8.41×10^5 N-s, but less than 1.1×10^6 N-s (MT);

(4) Combined cycle, pulsejet, ramjet, or scramjet engines (MT);

(5) Air-breathing engines that operate above Mach 4 not described in paragraph (d)(4) of USML Category IV (MT);

(6) Propulsion systems based on pressure gain combustion or detonation and not otherwise described in paragraph (d)(4) or (5) of USML Category IV (MT); and

(7) Rocket, SLV, and missile motors and engines not otherwise described in paragraphs (d)(1) through (6) of USML Category IV, except for amateur rocket motors.

(e) Systems and equipment for articles described in paragraph (a) of USML Category IV, as follows:

(1) Control and guidance systems and equipment as follows:

(i) Flight control systems (e.g., fly-by-wire, fly-by-light, pneumatic, hydraulic, electromechanical, mechanical, or electro-optical) specially designed for articles described in paragraph (a) of USML Category IV (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV);

(ii) Guidance systems specially designed for articles described in paragraph (a) of USML Category IV (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV); and

(iii) Attitude control equipment specially designed for articles described in paragraph (a)(1) of USML Category IV (MT);

(2) Thrust vector control systems not otherwise described in paragraph (d) of USML Category XV (MT if usable in articles described in paragraph (a)(1) of USML Category IV);

(3) Thermal protection systems (e.g., heat shields) usable for warheads or in articles described within paragraphs (a)(14) through (17) of USML Category IV (MT); and specially designed parts and components therefor (MT);

(4) Self-destruct systems specially designed for articles described in paragraph (a) of USML Category IV (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV);

(5) Separation systems, staging mechanisms, and interstages; and

specially designed parts and components therefor (MT if usable in articles described in paragraph (a)(1) of USML Category IV);

(6) Safing, arming, fuzing, and firing (SAFF) systems and equipment (to include target detection and proximity sensing devices) for articles described in paragraph (a)(1), (2), (3), (4), or (5) or (g) of USML Category IV; and specially designed parts and components therefor (MT if usable in articles described in paragraph (a)(1) of USML Category IV); and

(7) Seeker systems specially designed for articles described in paragraph (a) of USML Category IV (MT for articles described in paragraph (a)(1) or (2) of USML Category IV).

(f) Test equipment specially designed for articles described in paragraph (a)(1) or (2) or (e)(7) of USML Category IV.

* (g) Non-nuclear warheads (*e.g.*, explosive, kinetic, electromagnetic pulse, thermobaric, shaped charge, fuel air explosive, chemical, or biological).

(h) Parts, components, accessories, and attachments for articles described in USML Category IV, as follows:

(1)–(4) [Reserved]

(5) Grip stocks for MANPADS; and specially designed parts and components therefor;

(6) Nozzles or nozzle throats; and specially designed parts and components therefor (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV);

(7) Nose tips, nose fairings, or aerospikes; and specially designed parts, and components therefor (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV);

(8)–(12) [Reserved]

(13) Engine or motor mounts specially designed for articles described in paragraph (a) or (b) of USML Category IV (MT if usable with articles described in paragraph (a)(1) or (2) or (b)(1) of USML Category IV);

(14) Combustion chambers; and specially designed parts and components therefor (MT if usable in articles described in paragraph (a)(1) or (2) or (b)(1) of USML Category IV, or for any articles described in paragraphs (d)(1) through (5) of USML Category IV);

(15) Injector assemblies (MT if usable in articles described in paragraph (a)(1) of USML Category IV);

(16) Igniters;

(17) [Reserved]

(18) Parts and components not elsewhere specified, as follows:

(i) Parts and components specially designed both for articles described in paragraph (e) of USML Category IV and for underwater launch;

(ii) Non-electronic parts and components, specially designed both for

systems described in paragraph (e) of USML Category IV and for hostile nuclear radiation environments; and

(iii) Parts and components specially designed for articles described in paragraph (g) of USML Category IV;

* (19) Penetration aids (*e.g.*, physical or electronic countermeasure suites, atmospheric re-entry vehicle replicas or decoys, or submunitions); and specially designed parts and components therefor;

(20) Motor cases; and specially designed parts and components therefor (*e.g.*, flanges, flange seals, end domes) (MT if usable in articles described in paragraph (a)(1) or (2) of USML Category IV or if specially designed parts and components for use in hybrid rocket motors described in paragraph (d)(2) or (3) of USML Category IV);

(21) Liners and insulation for solid rocket motors (MT if liners for use in articles described in paragraph (a)(1) of USML Category IV, if liners specially designed for use in articles described in paragraph (a)(2) of USML Category IV; or if insulation for use in articles described in paragraph (a)(1) or (2) of USML Category IV);

(22) Radomes, sensor windows, antenna windows, and embedded antennae, specially designed for articles described in paragraph (a) of USML Category IV (MT if for radomes used in systems described in paragraph (a)(1) of USML Category IV or if for any radomes, sensor windows, or antenna windows manufactured as composite structures or laminates specially designed for use in articles described in paragraph (a)(1), (2), (16), or (17), (d)(1), or (e)(3) or (6) of USML Category IV);

(23) Payload fairings;

(24) Launch canisters (MT if usable with articles described in paragraph (a)(1) or (2) of USML Category IV);

(25) Fuzes specially designed for articles enumerated in paragraph (a) of USML Category IV and not otherwise described in paragraph (e)(6) of USML Category IV;

(26) Liquid or gel propellant tanks (MT if usable in systems described in paragraph (a)(1) of USML Category IV);

(27) Altimeters specially designed for articles described in paragraph (a)(1) of USML Category IV (MT);

(28) [Reserved]

(29) Electrical connectors specially designed for articles described in paragraph (a)(1) or (2) of USML Category IV, as follows (MT):

(i) Umbilical and interstage electrical connectors;

(ii) Electrical connectors between articles described in paragraph (a)(1) or (2) of USML Category IV and their payloads; and

(iii) Electrical connectors specially designed for hostile nuclear radiation environments;

(30) Any part, component, accessory, attachment, equipment, or system that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information; and

(31) Turbo pumps specially designed for articles described in paragraph (d) of USML Category IV.

(i) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h) of USML Category IV and classified technical data directly related to items controlled in ECCN 0A604, 0B604, 0D604, 9A604, 9B604, or 9D604 and defense services using the classified technical data. Defense services include the furnishing of assistance (including training) to a foreign person in the integration of a satellite or spacecraft to a launch vehicle, including both planning and onsite support, regardless of the jurisdiction, ownership, or origin of the satellite or spacecraft, or whether technical data is used. It also includes the furnishing of assistance (including training) to a foreign person in the launch failure analysis of a launch vehicle, regardless of the jurisdiction, ownership, or origin of the launch vehicle, or whether technical data is used. (See § 125.4 of this subchapter for license exemptions specifically related to this paragraph (i), and § 124.15 of this subchapter for special export controls for spacecraft and spacecraft launches.) (MT if directly related to articles designated as such.)

(j)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note 1 to paragraph (x): Use of this paragraph (x) is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

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Category VI—Surface Vessels of War and Special Naval Equipment

* * * * *

(f) * * *

(6) Parts, components, accessories, attachments, and equipment specially designed for:

(i) The integration of articles described in USML Category II, IV, or XVIII (MT if specially designed for rockets, space launch vehicles, or missiles capable of achieving a range greater than or equal to 300 km);

(ii) Catapults for launching aircraft (MT for catapults designed or modified for unmanned aerial vehicle systems capable of a range greater than or equal to 300 km); or

(iii) Arresting gear for recovering aircraft (MT for arresting gear designed or modified for unmanned aerial vehicle systems capable of a range greater than or equal to 300 km);

(7) Shipborne active protection systems (*i.e.*, defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vessel); and specially designed parts and components therefor, not otherwise described on the USML;

Category VII—Ground Vehicles

* * * * *

(g) * * *

(2) Active protection systems (*i.e.*, defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle); and specially designed parts and components therefor, not otherwise described on the USML;

* * * * *

(13) Test or calibration equipment for the mission systems of the vehicles in USML Category VII, except those enumerated elsewhere on the USML;

(14) * * *

(iii) Is being developed using classified information; or

(15) Parts, components, accessories, attachments, and equipment specially designed for the integration of articles described in USML Category IV with vehicles (MT if specially designed for rockets, space launch vehicles, unmanned aerial vehicle systems, or missiles capable of achieving a range greater than or equal to 300 km).

* * * * *

Category VIII—Aircraft and Related Articles

* * * * *

(h) * * *

(6) Parts, components, accessories, attachments, and equipment specially designed for the integration of articles described in USML Category IV with aircraft (*e.g.*, bomb racks, weapon

pylons, pylon-to-launcher adapters, external stores support systems for ordnance or weapons); and specially designed parts and components therefor (MT if usable in an aircraft or missile that has a range equal to or greater than 300 km);

* * * * *

Category XI—Military Electronics

* * * * *

(c) * * *

(4) Transmit/receive modules, transmit/receive monolithic microwave integrated circuits (MMICs), transmit modules, and transmit MMICs meeting any of the following:

(i) Articles having all of the following:

(A) A peak saturated power output (in watts), P_{sat} , greater than 505.62 divided by the maximum operating frequency (in GHz) squared [$P_{\text{sat}} > 505.62 \text{ W} * \text{GHz}^2/\text{fGHz}^2$] for any channel;

(B) A fractional bandwidth of 5% or greater for any channel;

(C) Any planar side with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [$d \leq 15 \text{ cm} * \text{GHz}/\text{fGHz}$]; and

(D) At least one electronically variable phase shifter per channel; or

(ii) MMICs that combine transmit and receive (T/R) functions on a single die, specially designed for spacecraft, having either of the following:

(A) A power amplifier with maximum saturated peak output power (in watts), P_{sat} , greater than 200 divided by the maximum operating frequency (in GHz) squared [$P_{\text{sat}} > 200 \text{ W} * \text{GHz}^2/\text{fGHz}^2$]; or

(B) A common path (*e.g.*, phase shifter-digital attenuator) circuit with greater than 3 bits phase shifting at operating frequencies 10 GHz or below, or greater than 4 bits phase shifting at operating frequencies above 10 GHz;

Note 1 to paragraph (c)(4): A MMIC: (a) Is formed by means of diffusion processes, implantation processes, or deposition processes in or on a single semiconducting piece of material; (b) can be considered as indivisibly associated; (c) performs the function(s) of a circuit; and (d) operates at microwave frequencies (*i.e.*, 300 MHz to 300 GHz).

Note 2 to paragraph (c)(4): A transmit/receive module is a multifunction electronic assembly that provides bi-directional amplitude and phase control for transmission and reception of signals.

Note 3 to paragraph (c)(4): A transmit module is an electronic assembly that provides amplitude and phase control for transmission of signals.

Note 4 to paragraph (c)(4): A transmit/receive MMIC is a multifunction MMIC that provides bi-directional amplitude and phase control for transmission and reception of signals.

Note 5 to paragraph (c)(4): A transmit MMIC is a MMIC that provides amplitude and phase control for transmission of signals.

Note 6 to paragraph (c)(4): USML Category XI(c)(4) applies to transmit/receive modules and to transmit modules, with or without a heat sink. The value of length d in USML Category XI(c)(4)(iii) does not include any portion of the transmit/receive module or transmit module that functions as a heat sink.

Note 7 to paragraph (c)(4): Transmit/receive modules, transmit modules, transmit/receive MMICs, and transmit MMICs may or may not have N integrated radiating antenna elements, where N is the number of transmit or transmit/receive channels.

Note 8 to paragraph (c)(4): Fractional bandwidth is the bandwidth over which output power remains constant within 3 dB (without the adjustment of other operating parameters), divided by the center frequency, and multiplied by 100. Fractional bandwidth is expressed as a percentage.

* * * * *

(15) Electronic parts and components, capable of operation at temperatures in excess of 125 °C and specially designed for any of the following: spacecraft described in USML Category XV; UAVs or drones described by USML Category VIII; or rocket, space launch vehicles (SLV), or missiles described in USML Category IV capable of achieving a range greater than or equal to 300 km (MT) (see note 2 to paragraph (a)(3)(xxix) of USML Category XI);

* * * * *

Category XIII—Materials and Miscellaneous Articles

* * * * *

(j) Equipment, materials, coatings, and treatments not elsewhere specified on the USML, as follows:

(1) Specially treated or formulated dyes, coatings, and fabrics used in the design, manufacture, or production of personnel protective clothing, equipment, or face paints designed to protect against or reduce detection by radar, infrared, or other sensors at wavelengths greater than 900 nanometers (see USML Category X(a)(2));

* (2) Equipment, materials, coatings, and treatments that are specially designed to modify the electro-optical, radiofrequency, infrared, electric, laser, magnetic, electromagnetic, acoustic, electro-static, or wake signatures of defense articles or 600 series items subject to the EAR through control of absorption, reflection, or emission to reduce detectability or observability (MT for applications usable for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range greater than or equal to 300 km, and their subsystems.

See note to paragraph (d) of USML Category XIII;

(3) Materials specially designed for the underwater launch of articles described in paragraph (a)(1) or (2) of USML Category IV; and

(4) Materials specially designed both for articles described in paragraph (a)(1) or (2) of USML Category IV and hostile radiation environments.

* * * * *

Category XV—Spacecraft and Related Articles

(a) Spacecraft, other than excluded NASA spacecraft or spacecraft that meet this paragraph (a) entirely through a hosted payload, as follows:

* (1) Spacecraft specially designed to detect, or mitigate the effects of (*e.g.*, scintillation), nuclear detonations;

* (2) Spacecraft specially designed to detect and track launch vehicles, missiles, kill vehicles, post-boost vehicles, re-entry vehicles or penetration aids;

* (3) Spacecraft specially designed for signals intelligence (SIGINT) or measurement and signatures intelligence (MASINT);

* (4) Spacecraft specially designed to operate with other spacecraft to function collectively as an article described elsewhere in paragraph (a) of USML Category XV;

* (5) Spacecraft equipped with space-to-space weapons (*e.g.*, kinetic, RF, laser, or directed energy);

* (6) Spacecraft equipped with space-to-ground weapons;

* (7) Spacecraft equipped with remote sensing instruments that utilize any of the following, assessed in the aggregate if more than one instrument is used for the same objective (significant military equipment (SME) only if Earth-pointing):

(i) Any number of spectral bands in the visible and near infrared (VNIR) through infrared spectrum (*i.e.*, wavelengths greater than 400 nm but less than or equal to 30,000 nm) and either a minimum cumulative light collecting surface area of 3,850 cm² or any individual light collecting optic with a minimum surface area of 2,150 cm²;

(ii) Forty (40) or more spectral bands in the VNIR through short-wavelength infrared (SWIR) spectrum (*i.e.*, wavelengths greater than 400 nm but less than or equal to 2,500 nm) and a Ground Sample Distance (GSD) less than 20 m;

(iii) Forty (40) or more spectral bands in the mid-wavelength infrared (MWIR) (*i.e.*, wavelengths greater than 2,500 nm but less than or equal to 5,500 nm), a GSD less than 200 m and either a

narrow spectral bandwidth less than or equal to 20 nm or a wide spectral bandwidth greater than 20 nm; or

(iv) Forty (40) or more spectral bands in the long-wavelength infrared (LWIR) (*i.e.*, wavelengths greater than 5,500 nm but less than or equal to 30,000 nm), a calibrated GSD less than 500 m, and either a narrow spectral bandwidth less than or equal to 50 nm or a wide spectral bandwidth greater than 50 nm;

* (8) Spacecraft equipped with radar remote sensing (*e.g.*, active electronically scanned array (AESA), synthetic aperture radar (SAR), inverse synthetic aperture radar (ISAR), and ultra-wideband SAR), excluding those having both a bandwidth less than or equal to 500 MHz and a center frequency greater than or equal to 1 GHz but less than or equal to 10 GHz;

(9) Spacecraft that generate positioning, navigation, and timing (PNT) signals, excluding those that provide only a differential correction broadcast;

(10) [Reserved]

(11) Spacecraft limited to suborbital trajectories, specially designed for atmospheric re-entry, and equipped with propulsion systems described within either paragraph (e) of USML Category XV or paragraphs (d)(1) through (6) of USML Category IV;

(12) Spacecraft specially designed either to image other spacecraft with an angular resolution better than (less than or equal to) 4 mrad or to monitor, follow, and collect signals from other spacecraft;

* (13) Spacecraft that are classified, contain classified articles other than a hosted payload classified by DoD, or are either manufactured or developed with the use of classified information (*e.g.*, requirements, specifications, functions, or operational characteristics);

* (14) Spacecraft specially designed to grapple or dock with another spacecraft through means other than receiving mechanisms on the target spacecraft intended to facilitate grappling or docking;

* (15) Spacecraft specially designed to construct, while in orbit, spacecraft described in paragraph (a) of USML Category XV;

(16) Spacecraft specially designed to deploy multiple spacecraft larger than 3,400 cm³ within 72 hours into orbits separated from each other by at least 25 km; and

(17) Articles that can be separated from a spacecraft and incorporate all of the following:

(i) A guidance, navigation, and control (GNC) system;

(ii) An attitude control system; and

(iii) A system described in paragraph (d) of USML Category XV or within paragraphs (d)(1) through (4) of USML Category IV.

Note 1 to paragraph (a): When a spacecraft not otherwise described in this paragraph (a) incorporates is a hosted payload described in paragraph (e)(17) of USML Category XV, while the hosted payload remains subject to this subchapter, the spacecraft remains subject to the EAR. Spacecraft that incorporate other payloads described in paragraph (e)(17) are described in this paragraph (a).

(b) Ground control systems and telemetry, tracking, and control (TT&C) simulators, specially designed for spacecraft described in paragraph (a) of USML Category XV.

(c) Spacecraft systems and equipment, as follows:

(1) Active cryocoolers and cold finger systems specially designed for spacecraft, and associated control electronics specially designed therefor;

(2) Active vibration suppression systems (*e.g.*, isolation and dampening systems) specially designed for spacecraft, and associated control electronics specially designed therefor;

(3) Attitude determination and control systems that provide a spacecraft's location on a planetary coordinate system, without using ground location points, with an accuracy described within paragraphs (c)(3)(i) through (iv) of USML Category XV; and specially designed parts and components therefor:

(i) Less than or equal to 5 meters (CE90) from low Earth orbit (LEO) or equivalent;

(ii) Less than or equal to 30 meters (CE90) from medium Earth orbit (MEO) or equivalent;

(iii) Less than or equal to 150 meters (CE90) from geosynchronous orbit (GEO) or equivalent; or

(iv) Less than or equal to 225 meters (CE90) from high Earth orbit (HEO) or equivalent; and

(4) Thermal protection systems (*e.g.*, heat shields) specially designed for atmospheric re-entry, not otherwise described in paragraph (e)(3) of USML Category IV; and specially designed parts and components therefor (MT).

(d) Propulsion systems and power systems for spacecraft, as follows; and specially designed parts and components therefor:

(1) Nuclear reactors and associated power conversion systems (*e.g.*, liquid metal or gas-cooled fast reactors);

(2) Radioisotope-based power systems (*e.g.*, radioisotope thermoelectric generators);

(3) Nuclear thermal propulsion systems (*e.g.*, solid core, liquid core, gas core fission);

(4) Electric (e.g., Plasma or Ion) propulsion systems that operate at an input power of at least 20 kW or provide both a thrust greater than 400 milli-Newtons and a specific impulse greater than 1,900 sec; and

(5) Non-nuclear propulsion systems that use a bi-propellant or mono-propellants and produce vacuum thrust greater than 667.23 N (MT if total impulse is equal to or greater than 8.41×10^5 N s).

(e) Spacecraft parts, components, accessories, and attachments, as follows:

(1) Antennas specially designed for spacecraft, with an operating frequency of at least 40 GHz, and any of the following characteristics:

(i) A projected circular aperture diameter greater than 25 meters;

(ii) Active electronic scanning;

(iii) Adaptive beam forming; or

(iv) Specially designed for interferometric radar;

(2) Optics (e.g., lens, mirror, or membrane) meeting any of the following:

(i) Active (e.g., adaptive, deformable) with an individual light collecting area of 1,020 cm² or greater;

(ii) Passive with an individual light collecting area of 2,150 cm² or greater; or

(iii) X-ray, not otherwise described in paragraph (e)(2)(i) or (ii) of USML Category XV, with a total effective collecting area greater than or equal to 3,000 cm² and an angular resolution less than or equal to 30 milliarcseconds;

(3) Focal plane arrays (FPA) specially designed for spacecraft and having a peak response wavelength greater than 900 nm;

(4)–(5) [Reserved]

(6) Optical bench assemblies specially designed for articles described in paragraph (a) of USML Category XV;

(7)–(8) [Reserved]

(9) Space-qualified cesium, rubidium, hydrogen maser, or quantum (e.g., based upon Al, Hg, Yb, Sr, or Be Ions) atomic clocks; and specially designed parts and components therefor;

(10)–(12) [Reserved]

(13) Control moment gyroscopes (CMG) that provide an angular momentum of at least 2.0 Newton meter seconds (N m sec), provide a torque of at least 6.0 Newton meters (N m), and are specially designed for spacecraft;

(14) [Reserved]

(15) Oscillators specially designed for articles described in paragraph (a) or (h)(17) of USML Category XV and with phase noise less than -120 dBc/Hz + $(20 \log_{10}(\text{RF}))$ (in GHz) measured at $2 \text{ KHz} \times \text{RF}$ (in GHz) from carrier;

(16) Star trackers and star sensors with angular accuracy less than or equal

to 1 arcsec (1-Sigma) per star coordinate, and a tracking rate equal to or greater than 3.0 deg/sec; and specially designed parts and components therefor (MT);

* (17) Payloads that perform any of the functions described within paragraphs (a)(1) through (17) of USML Category XV;

* (18) Payloads, developed with Department of Defense-funding; and specially designed parts and components therefor;

(19)–(20) [Reserved]

(21) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information; and

(22) Any part, component, accessory, or attachment that is designed to modify a spacecraft's optical, radiofrequency, or infrared signature as observed from orbit.

(f) Technical data, excluding spacecraft housekeeping data and output and human spaceflight preparations (see § 120.33 of this subchapter and § 121.0), and defense services, excluding human spaceflight preparations (see § 120.32 of this subchapter and § 121.0), directly related to the defense articles described in paragraphs (a) through (e) of USML Category XV and classified technical data directly related to items controlled in ECCN 9A515, 9B515, or 9D515 and defense services using the classified technical data. (MT if related to articles designated as such.)

(g)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles.

Note 1 to paragraph (x): Use of this paragraph (x) is limited to license applications for defense articles where the purchase documentation also includes commodities, software, or technology subject to the EAR (see § 123.21(b) of this subchapter).

* * * * *

Category XX—Submersible Vessels and Related Articles

* * * * *

(c) Parts, components, accessories, attachments, and associated equipment, including production, testing, and inspection equipment and tooling, specially designed for any of the articles in paragraphs (a) and (b) of USML Category XX (MT if specially designed for rockets, space launch vehicles, unmanned aerial vehicle systems, or missiles capable of achieving a range greater than or equal to 300 km).

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 6. The authority citation for part 126 continues to read as follows:

Authority: 22 U.S.C. 287c, 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2780, 2791, 2797, 10423; sec. 1225, Pub. L. 108–375, 118 Stat. 2091; sec. 7045, Pub. L. 112–74, 125 Stat. 1232; sec. 1250A, Pub. L. 116–92, 133 Stat. 1665; sec. 205, Pub. L. 116–94, 133 Stat. 3052; and E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 7. Add § 126.8 to read as follows:

§ 126.8 Civil space promotion: exemptions, policies, and requirements.

(a) *Exemption for certain official space agency programs.* No license or other approval is required for the export, reexport, retransfer, or temporary import of defense articles, or the furnishing of defense services, when such activity is entirely within the scope of an official space agency program as identified in paragraph (a)(2) of this section, subject to the restrictions in paragraph (a)(1) of this section.

(1) *Restrictions.* The exemption set forth in this paragraph (a) does not apply:

(i) For purposes of establishing offshore procurement arrangements or producing defense articles offshore (see § 124.13 of this subchapter);

(ii) To any of the following:

(A) Activities whose value exceeds the amounts described in § 123.15 of this subchapter;

(B) Activities that involve the manufacturing abroad of significant military equipment as described in § 124.11 of this subchapter; or

(C) For commercial communications satellites for launch from the Russian Federation, Ukraine, or Kazakhstan (see § 123.15 of this subchapter); or

(iii) Defense articles or defense services that are classified (see § 120.38 of this subchapter).

(2) *Official space agency programs.* Spacecraft within the scope of the following programs are eligible for the exemption in this paragraph (a):

(i) NASA's Lunar Gateway;

(ii) NASA's Mars Sample Return;

(iii) Nancy Grace Roman Telescope; and

(iv) The Orion spacecraft.

(b) *Exemption for certain space activities.* No license or other approval is required for the activities identified in paragraph (b)(2) of this section, subject to the restrictions in paragraph (b)(1) of this section.

(1) *Restrictions.* The exemption set forth in this paragraph (b) is subject to all of the following restrictions:

(i) The end-use for paragraph (b)(2)(i) of this section must be to connect a

spacecraft, subject to the EAR to its launch vehicle; and

(ii) For the spacecraft referenced in paragraph (b)(1)(i) of this section, the scheduled launch date must be within six months of when the activities are conducted.

(2) *Exempted activities.* The following activities are eligible for the exemption in this paragraph (b):

(i) The export, reexport, retransfer, or temporary import of the following defense articles:

(A) Electrical connectors described in paragraph (h)(29) of USML Category IV in part 121 of this subchapter, other than those used in ballistic missiles; and directly related interface control documents;

(B) [Reserved]

(ii) Encrypting, decrypting, relaying, or retransmitting, to or from a ground station, unmodified telemetry for the health, systems status, position, and velocity of space launch vehicles described in USML Category IV in part 121 of this subchapter;

(iii) The furnishing of assistance to a foreign person in the operation or use of an on-orbit defense article in support of fundamental research as defined at § 120.34(a)(8) of this subchapter; and

(iv) The furnishing of assistance to a foreign person in the operation or use of an on-orbit defense article to geolocate the following radiofrequency transmissions:

(A) Emergency locator transmission (ELT) frequencies 121.5, 243.0, and 406 MHz;

(B) Automatic identification system (AIS) frequencies 161.975 and 162.025 MHz;

(C) Commercial VHF maritime mobile frequencies 156 through 174 MHz; and

(D) Commercial non-satellite cellular telephone communications specified by the global system for mobile communications (GSM), universal mobile telecommunications system (UMTS), long-term evolution (LTE), or the following International Mobile Telecommunications (IMT) standards: IMT-2000 (3G), IMT-Advanced (4G), or IMT-2020 (5G).

(c) *Exemption for space tourism and research.* No license or other approval is required for the export, reexport, or temporary import of manned spacecraft, subject to all of the following restrictions:

(1) The spacecraft must be limited to suborbital trajectories;

(2) The purpose of the activity must be limited to either space tourism or supporting fundamental research as defined at § 120.34(a)(8) of this subchapter;

(3) The activity must not transfer registration, control, or ownership of the spacecraft to a foreign person; and

(4) The spacecraft's destinations, including planned diverts and contingencies, must be approved by the Federal Aviation Administration or its foreign equivalent, and must not include any proscribed destinations under § 126.1 of this subchapter.

(d) *Licensing of defense articles incorporated or integrated into EAR spacecraft.* Articles described in paragraph (c), (d), or (e) of USML Category XV in part 121 of this subchapter may be licensed for export, reexport, or retransfer by the Department of Commerce's Bureau of Industry and Security while they are incorporated in, and included as an integral part of, a spacecraft subject to the EAR. Articles do not become eligible for this licensing provision until incorporated into the spacecraft subject to the EAR. Exports, reexports, retransfers, or temporary imports of defense articles prior to incorporation, and directly related technical data and defense services, are not eligible for this licensing provision. Replacement articles, and articles subsequently unincorporated from the spacecraft, are not eligible for this licensing provision.

Bonnie D. Jenkins,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2024-24091 Filed 10-17-24; 4:15 pm]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2020-009, Docket No. FAR-2020-0009, Sequence No. 1]

RIN 9000-AO07

Federal Acquisition Regulation: List of Domestically Nonavailable Articles

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to revise the list of domestically nonavailable articles under the Buy American statute

and implement requirements related to making future changes to the list.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before December 23, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020-009 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2020-009". Select the link "Comment Now" that corresponds with "FAR Case 2020-009". Follow the instructions provided on the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2020-009" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2020-009" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 or by email at zenaida.delgado@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAR Case 2020-009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the list of domestically nonavailable articles at FAR 25.104(a) and take other actions to limit the use of regulatory nonavailability waivers consistent with section 9 of Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475, January 28, 2021). E.O. 14005 establishes policies to maximize the Federal Government's use of goods, products,

and materials produced in the United States to help American businesses compete in strategic industries and ensure America's workers thrive. A key pillar of the E.O. involves reducing the need for waivers to the Buy American statute (41 U.S.C. chapter 83), which generally requires that only domestically mined, produced, or manufactured articles be procured for public use in the United States. The Buy American statute provides an exception for articles not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Prior to issuance of E.O. 14005, FAR 25.103(b)(2)(i) authorized the head of the contracting activity to make an individual determination of nonavailability without having to publicly share the rationale for the determination or the nature of the market research conducted. The agency simply reported to the Federal Procurement Data System if a nonavailability waiver was used on a particular acquisition. In addition, a written determination of nonavailability was not required if the acquisition was conducted using full and open competition, synopsized, and no offer for a domestic source was received. This process made it challenging for an existing Government contractor or potential new entrant to become aware if its capabilities were being overlooked. Further, if the contracting officer considered that the nonavailability of an article was likely to affect future acquisitions over a period of time, FAR 25.103(b)(2)(ii) authorized the contracting officer to submit a copy of the determination and supporting documentation to the appropriate regulatory council identified in FAR 1.201-1 (*i.e.*, the Defense Acquisition Regulations Council or the Civilian Agency Acquisition Council), in accordance with agency procedures, to consider inclusion on the list of nonavailable articles at FAR 25.104(a). Inclusion of the article on the nonavailability list reduces the level of public outreach even further in light of the presumption of nonavailability.

E.O. 14005 makes a number of changes to tighten the waiver process and strengthen efforts to increase reliance on domestic sourcing. First, with respect to individual waivers (see FAR 25.103(b)(2)(i)), the E.O. updates, centralizes, and provides transparency to the process for their issuance. Section 4 of the E.O. established the Made in America Office (MIAO) in the Office of Management and Budget (OMB) to manage a centralized process for

reviewing proposed agency nonavailability waivers for individual and multiple procurements. Agencies can no longer simply rely on the absence of domestic offers in a competition to justify a nonavailability waiver. OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws, and guidance issued jointly by MIAO and the Office of Federal Procurement Policy (OFPP), Improving the Transparency of Made in America Waivers (October 26, 2021), provided direction to agencies for the development, coordination, and posting of waivers. In particular, the guidance instructs agencies to describe steps the agency has taken to understand market capabilities and capacity to help potential interested sources and supply chain experts identify where opportunities might have been missed and could be pursued when future needs arise. The guidance provides that waivers will cover individual transactions but allows agencies to pursue multi-procurement waivers for repetitive needs where market research indicates that domestic capability may be lacking for a period of time, provided the waiver is time limited. The guidance states that agencies should continually study the market and reflect recent analysis in their proposed waivers and not assume that there is no qualifying product simply because one was not found in a prior year. The guidance further directs that proposed waivers must be posted on the *MadeinAmerica.gov* website so that interested sellers can have a better understanding of where agencies are having trouble finding U.S.-made products. The guidance explains that greater transparency should lead to a more responsive supplier base and help agencies build diversity by pulling new entrants into the Federal marketplace. DoD, GSA, and NASA will address regulatory changes to FAR 25.103 through a future rulemaking.

Second, section 9 of E.O. 14005 creates a new oversight mechanism to more carefully control the identification of articles eligible for inclusion at FAR 25.104(a) ("regulatory waivers", see FAR 25.103(b)(1)(i)). Section 9 requires the Director of OMB, through the Administrator of OFPP, to consult with the Secretary of Commerce and the Director of MIAO regarding any changes proposed by DoD, GSA, and NASA to the list of nonavailable articles identified at FAR 25.104(a). Section 9 of E.O. 14005 requires paying particular attention to economic analyses of

relevant markets and available market research, to determine whether there is a reasonable basis to conclude that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

DoD, GSA, and NASA are issuing this proposed rule to implement section 9 and reduce reliance on regulatory waivers that can disincentivize domestic sourcing by signaling a lack of confidence in domestic manufacturers' capacity to meet the Federal Government's current demand or grow capacity to meet future demand. A general presumption of nonavailability discourages the type of ongoing, proactive engagement with industry to understand supply chains and market trends that is vital to strengthening domestic manufacturing.

DoD, GSA, and NASA, in partnership with MIAO and OFPP, have conducted a proactive review of each of the 109 articles on the existing nonavailable articles list. The current list of articles identified in FAR 25.104(a) is a wide-ranging mix of natural resources, compounds, materials, and other items of supply. Although some articles on the list have no known domestic production sources (*e.g.*, quartz crystals or vanilla beans), many of the articles are known to have some domestic production sources, but those sources have been determined in the past to be inadequate to meet U.S. demand. Examples of such articles range from bismuth (not more than 10 percent of U.S. Government and nongovernment demand) to spices and herbs, in bulk, (not more than 40 percent of U.S. Government and nongovernment demand). For additional discussion regarding the basis for removal of articles from the list at FAR 25.104(a), see section IV. of this proposed rule preamble.

II. Discussion and Analysis

The following summarizes the proposed changes to the FAR:

A. Proposed Revisions to the List at FAR 25.104(a)

DoD, GSA, and NASA are proposing to remove numerous articles from the nonavailability list as a general reset of the list to remove a presumption of nonavailability as a means to encourage further market research and send a signal to industry. This may mean that contracting officers will do more market research on domestic availability of the removed products. It also may encourage domestic producers to take an interest in the articles removed from the nonavailability list. Proposed

removals include the following articles: acetylene, black; agar, bulk; anise; asbestos, amosite, chrysotile, and crocidolite; bauxite; beef, corned, canned; beef extract; bethovenium hydroxynaphthoate; cadmium, ores and flue dust; calcium cyanamide; castor beans and castor oil; chalk, English; chicle; cinchona bark; cobalt, in cathodes, rondelles, or other primary ore and metal forms; colchicine alkaloid, raw; copra; crane rail (85-pound per foot); cryolite, natural; dammar gum; diamonds, industrial, stones and abrasives; emetine, bulk; ergot, crude; erythrityl tetranitrate; goat hair canvas; goat and kidskins; graphite, natural, crystalline, crucible grade; hand file sets (Swiss pattern); handsewing needles; ipecac, root; iodine, crude; kauri gum; lac; lavender oil; leather, sheepskin, hair type; manganese; menthol, natural bulk; mica; microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property); nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts; nux vomica, crude; oiticica oil; olive oil; olives (green), pitted or unpitted, or stuffed, in bulk; opium, crude; petroleum, crude oil, unfinished oils, and finished products; pine needle oil; platinum and related group metals, refined, as sponge, powder, ingots, or cast bars; pyrethrum flowers; quebracho; quinidine; quinine; rabbit fur felt; radium salts, source and special nuclear materials; rosettes; santonin, crude; secretin; shellac; sugars, raw; talc, block, steatite; tantalum; thread, metallic (gold); thyme oil; triprolidine hydrochloride; tungsten; wax, carnauba; wire glass; woods, logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak; yarn, 50 Denier rayon; and yeast, active dry and instant active dry.

There is no substantial evidence that there is a major increase in the availability of the articles being deleted, but there is evidence that there is capacity for many of the articles being removed. Review of several publications such as periodicals from the United States Geological Survey (USGS) shows that for many of these articles there is some degree of domestic capacity. For example, according to the USGS, the United States produces 43,000 metric tons of mica per year, and the Economic Research Service of the U.S. Department of Agriculture reports that the United States is one of the world's largest

producers of raw sugar. For additional discussion regarding the basis for removal of these articles from the list, see section IV. of this proposed rule preamble.

B. Proposed Protocols To Amend the List at FAR 25.104(a)

The rule proposes adding FAR language to implement the requirements of section 9 of E.O. 14005 requiring consultation with the Secretary of Commerce and the MIAO Director prior to any changes to the list at FAR 25.104(a). The proposed rule retains the current standard for inclusion on the list, which is that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand. See FAR 25.103(b)(1)(i). It also retains the requirement that the procuring agency is responsible for conducting market research appropriate to the circumstances, including seeking domestic sources before acquisition of an article on the list. This applies to acquisition of an article as either an end product or a significant component (valued at more than 50 percent of the value of all the components).

Finally, the class determination for articles on the list will continue to be deemed inapplicable if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiated procurements that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. See FAR 25.103(b)(1)(iii).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Expected Impact of the Rule

The proposed rule would substantially reduce the number of articles on the list at FAR 25.104(a) that are presumed by regulation to be nonavailable in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Removal of an article from the list means that if such articles are acquired by the agency in the future, the agency may no longer presume the article is not available domestically. Instead, the agency must submit a proposed waiver to MIAO

explaining the basis for concluding the article is not available domestically, including the market research conducted to find domestic sources, and post the proposed waiver on *MadeinAmerica.gov*. Over time, decreased reliance on regulatory waivers and greater use of individual waivers that are reviewed centrally and posted publicly should contribute to a more dynamic, diverse, and competitive domestic industrial base. As a general matter, regulatory waivers disincentivize domestic sourcing by signaling a lack of confidence in its capacity to meet the Federal Government's current demand or grow capacity to meet future demand. Use of individualized waivers in lieu of regulatory waivers that are coordinated centrally and posted for public awareness should encourage the type of ongoing, proactive engagement with industry to understand supply chains and market trends that is vital to strengthening domestic manufacturing and reducing the need for waivers over time. As explained in OMB Memorandum M-21-26 and the joint memorandum MIAO and OFPP issued on October 26, 2021, there are a number of strategic advantages to central review and posting of waivers, including: the ability for MIAO and agencies to share market research information and insight that might lead to the identification of domestic sources in future acquisitions; the ability for agencies to send a clear demand signal to industry of the Federal Government's desire to reduce reliance on foreign-made items; the ability for potential sources to see opportunities for new domestic providers, and for existing domestic providers that may have been overlooked to see if agencies may have missed market capabilities in their market research; and the opportunity for MIAO to bring greater consistency in use of waivers across the Government through its feedback to agencies. The heightened transparency provided on individual waivers can be especially beneficial in furthering both contractor resilience by reducing transaction costs for potential sellers and diversity by lowering a barrier to entry for small businesses and new entrants to the Federal market that may struggle to find work opportunities.

There are 109 articles currently subject to regulatory waiver. In the past, DoD, GSA, and NASA have largely relied on public comment to identify articles that should be removed from the list. For example, an advance notice of proposed rulemaking was issued at 85 FR 28596 on May 13, 2020, seeking information that would assist in

identifying domestic capabilities and for evaluating whether some articles on the list at FAR 25.104(a) should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. While public input and insight remains an important part of the review process, DoD, GSA, and NASA conducted a proactive review of each article, in consultation with MIAO and OFPP, to determine if the presumption of nonavailability remains appropriate. This review will help to ensure the list more accurately reflects market conditions and to avoid overlooking domestic capabilities.

Articles were identified as suitable for removal from the list if one or more of the following criteria were met: (i) there is a demonstrated domestic capacity to source the article; (ii) more limited duration waivers with centralized management would provide important insight into Government supply chains, including critical supply chains with national or economic security implications; (iii) there is limited Government demand for the article; or (iv) the articles are believed to be obsolete.

Articles proposed for removal from the list based on an expectation of sufficient and reasonably available commercial quantities include petroleum, crude oil, unfinished oils, and finished products, as the domestic crude oil capacity of the United States makes it the world's largest producer of crude oil according to the U.S. Energy Information Administration. Similarly, according to the USGS' Mineral Commodity Summary for Cadmium in January 2024, the United States has demonstrated a domestic capacity of cadmium that has allowed it to become a net exporter of this metal. Talc, block, steatite is an additional article for which, according to Mineral Commodities Summaries for 2024, the United States domestic capacity was capable of meeting domestic demand. The report indicated that the United States' net import reliance for talc as a percentage of apparent consumption was six percent in 2023. Other articles expected to meet this criterion include: beef, corned, canned; beef extract; leather, sheepskin, hair type; sugars, raw; and yeast, active dry and instant active dry.

Articles proposed for removal from the list based on the conclusion that more limited duration waivers with centralized management would provide important insight into Government supply chains include: bauxite; cobalt, in cathodes, rondelles, or other primary

ore and metal forms; diamonds, industrial, stones and abrasives; goat hair canvas; goat and kidskins; graphite, natural, crystalline, crucible grade; iodine, crude; manganese; mica; microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property); nickel, primary, in ingots, pigs, shots, cathodes, or similar forms, nickel oxide and nickel salts; olive oil; olives (green), pitted or unpitted, or stuffed, in bulk; platinum and related group metals, refined, as sponge, powder, ingots, or cast bars; tantalum; and tungsten. Many of these articles fall within critical supply chains that were prioritized for strengthening under E.O. 14017, America's Supply Chains, for reasons of national or economic security.

Articles proposed for removal from the list because there is limited Government demand for the article include: acetylene, black; agar, bulk; chalk, English; anise; bethovenium hydroxynaphthoate; calcium cyanamide; castor beans and castor oil; chicle; cinchona bark; colchicine alkaloid, raw; copra; crane rail (85-pound per foot); cryolite, natural; dammar gum; emetine, bulk; ergot, crude; erythrityl tetranitrate; hand file sets (Swiss pattern); handsewing needles; lac; lavender oil; menthol, natural bulk; nux vomica, crude; oiticica oil; opium, crude; pine needle oil; pyrethrum flowers; quebracho; quinidine; quinine; rabbit fur felt; radium salts, source and special nuclear materials; rosettes; secretin; shellac; thread, metallic (gold); thyme oil; triprolidine hydrochloride; wax, carnauba; wire glass; woods, logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak; and yarn, 50 Denier rayon.

Articles proposed for removal from the list because they are believed to be obsolete include asbestos, amosite, chrysotile, and crocidolite; ipecac, root; kauri gum; and santonin, crude. The removal of asbestos from the list meets the obsolescence criteria because of the Environmental Protection Agency's ban on ongoing uses of asbestos.

In total, DoD, GSA, and NASA are proposing to remove 70 articles from the list at FAR 25.104(a). This would reduce the existing list by more than half.

The proposed rule provides these benefits at minimal cost to Federal contractors or the Government. There should be no cost to Federal contractors from the proposed reduction of articles on the regulatory waiver list, as the

transition to individual waivers should increase transparency and reduce transaction costs associated with finding domestic opportunities.

The proposed rule is expected to create only minimal additional procurement costs to the Government due to the low amount of spend and the low number of contract actions for the articles removed from the list. In fiscal year (FY) 2023, the Federal contract spend for the articles removed from the list was estimated to be under \$150 million, which represents less than 0.02 percent of the total Federal contract spend for the same year. In FY 2023, the number of Federal contract actions for the articles removed from the list was estimated to be under 10,000 Federal contract actions, which represents less than 0.02 percent of the total number of Federal contract actions for the same year. This data set excludes petroleum, crude oil, unfinished oils, and finished products. For the under 10,000 Federal contract actions estimated to be potentially impacted by the articles' removal from the list, agencies will still be able to use preexisting procedures to seek an individual waiver from MIAO. Additionally, for articles for which market research shows domestic capability may not be sufficient for a period of time and the agency has a need for repetitive purchases under an indefinite-delivery contract, the agency may pursue a time-bound multi-procurement waiver.

The potential procurement costs to the Government are reduced further when considering the nature of some of the articles to be removed. The articles removed include many items that are no longer procured in significant amounts or are obsolete. It is estimated that approximately half of the articles on the list have not been procured in significant quantities in FY 2021 through FY 2023, are obsolete or greatly reduced in their use (e.g., santonin), or are subject to regulatory changes since they were added to the nonavailable articles list (e.g., asbestos).

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the rule is not implementing any requirements with which small entities must comply. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to revise the list of domestically nonavailable articles under the Buy American statute and the protocols to amend the list.

The objective of this rule is to revise the list of nonavailable articles at FAR 25.104(a). The rule also seeks to implement section 9 of E.O. 14005. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

The proposed rule impacts all entities that do business with the Federal Government, including the over 331,899 small business registrants in the System for Award Management. However, DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities because the rule is not implementing any requirements with which small entities must comply. It is expected that this proposed rule will encourage small businesses to take an interest in building domestic manufacturing capabilities and capacity; this would be a positive impact though not a substantial impact.

The proposed rule does not include additional, or change any existing, reporting or recordkeeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no available alternatives to the proposed rule to accomplish the desired objective of E.O. 14005.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested

parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–009), in correspondence.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Part 25

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

■ 1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 25—FOREIGN ACQUISITION

■ 2. Revise section 25.104 to read as follows:

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b)(1)(i):

- Antimony, as metal or oxide.
- Bamboo shoots.
- Bananas.
- Bismuth.
- Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
- Brazil nuts, unroasted.
- Capers.
- Cashew nuts.
- Chestnuts.
- Chrome ore or chromite.
- Cocoa beans.
- Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
- Coffee, raw or green bean.
- Cork, wood or bark and waste.
- Cover glass, microscope slide.
- Fair linen, altar.
- Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
- Grapefruit sections, canned.
- Hemp yarn.
- Hog bristles for brushes.
- Hyoscine, bulk.
- Modacrylic fiber.

Nitroguanidine (also known as picrite).

Oranges, mandarin, canned.

Pineapple, canned.

Quartz crystals.

Rubber, crude and latex (natural).

Rutile.

Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

Spices and herbs, in bulk.

Swords and scabbards.

Tapioca flour and cassava.

Tartar, crude; tartaric acid and cream of tartar in bulk.

Tea in bulk.

Tin in bars, blocks, and pigs.

Vanilla beans.

Venom, cobra.

Water chestnuts.

(b) To amend the list of nonavailable articles, an economic analysis is required of relevant markets and available market research, to determine whether there is a reasonable basis to conclude that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. This analysis will be performed by the Director of the Office of Management and Budget (OMB), through the Administrator of the Office of Federal Procurement Policy, who will consult with the Secretary of Commerce and the Director of the OMB's Made in America Office on any proposed changes. (Executive Order 14005 of January 25, 2021, Ensuring the Future Is Made in All of America by All of America's Workers, Section 9).

(c) This list will be published in the **Federal Register** for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502). An economic analysis as described in paragraph (b) of this section will be used to support changes to the list.

[FR Doc. 2024–24395 Filed 10–22–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 241016–0272; RTID 0648–XF174]

Endangered and Threatened Wildlife and Plants; Proposed Listing Determinations for Ten Species of Giant Clams Under the Endangered Species Act; Extension of Public Comment Period

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, NMFS, announce the extension of the public comment period on our July 25, 2024 proposed rule to list 5 species of giant clams as endangered and 5 species of giant clams as threatened under the Endangered Species Act (ESA) and to issue protective regulations for the 5 proposed threatened species under section 4(d) of the ESA. As part of that proposed action, we solicited comments on the proposed rule, a draft environmental assessment (EA), and an initial regulatory flexibility analysis (IRFA) over a 90-day comment period, which was scheduled to close on October 23, 2024. Comments previously submitted do not need to be resubmitted, as they will be fully considered in the agency's proposed action.

DATES: The comment period for the proposed rule published July 25, 2024 at 89 FR 60498, is extended. The deadline for receipt of comments is extended from October 23, 2024 to February 19, 2025.

ADDRESSES: You may submit data, information, or written comments on this document, identified by NOAA–NMFS–2017–0029, by either of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2017–0029 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Endangered Species Division, Office of Protected Resources (F/PR3), National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, USA, Attn: Giant Clams Species Listing Proposed Rule.

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 personally identifying information (e.g., name, address, etc.), 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).

The Status Review Report associated with this determination, its references, and the petition can be accessed electronically at: <https://www.fisheries.noaa.gov/action/proposed-rule-10-species-giant-clams-under-endangered-species-act>. The peer review plan, associated charge statement, and peer review report can be accessed electronically at: <https://www.noaa.gov/information-technology/status-review-report-of-7-giant-clam-species-petitioned-under-us-endangered-species-act-hippopus>. The draft EA and IRFA associated with the proposed ESA section 4(d) regulation for *Tridacna crocea*, *T. maxima*, *T. noae*, and *T. squamosa* can be accessed electronically via the Federal e-Rulemaking Portal by navigating to <https://www.regulations.gov> and entering NOAA–NMFS–2017–0029 in the Search box.

FOR FURTHER INFORMATION CONTACT: John Rippe, NMFS Office of Protected Resources, 301–427–8467; John.Rippe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2024, we published a proposed rule to list 5 species of giant clams as endangered and 5 species of giant clams as threatened under the ESA and to issue protective regulations for the five proposed threatened species under section 4(d) of the ESA (89 FR 60498). In that notification, we also announced the availability of a draft EA and IRFA associated with the proposed ESA section 4(d) regulation for *Tridacna crocea*, *T. maxima*, *T. noae*, and *T. squamosa*. We solicited comments on the proposed rule, draft EA, and IRFA during a 90-day period, which is scheduled to end on October 23, 2024.

On August 30, 2024, we received a formal request from the Territorial governments of American Samoa, Guam, and the Commonwealth of the

Northern Mariana Islands to extend the public comment period by 120 days in order to provide additional time to thoroughly review and analyze the proposed rule, associated reports, and supporting datasets and to engage with key stakeholders. We received additional requests from the Western Pacific Regional Fishery Management Council on September 27, 2024 and from U.S. Rep. James Moylan on October 4, 2023 similarly asking for a 120-day extension to allow more time for community members to provide informed comments in response to the proposed rule.

In our evaluation of these requests, we considered several factors that may justify such a lengthy extension to the public comment period. We considered that the proposed rule includes extinction risk analyses and associated listing determinations for seven different species of giant clams. We also considered that the proposed rule includes the proposed listing of four species of giant clams on the basis of similarity of appearance. Importantly, three of these four species had been included in the initial petition for listing, but we concluded that the petition did not present substantial scientific or commercial information indicating that listing these species under the ESA may be warranted (82 FR 28946, June 26, 2017). Thus, the subsequent proposal to list these species on the basis of their similarity of appearance may reasonably warrant additional time for public review and comment. Lastly, we considered that the proposed rule includes two separate 4(d) regulations, one associated with the species proposed to be listed as threatened based on extinction risk (*Hippopus hippopus*) and the other associated with the four species proposed to be listed as threatened based on similarity of appearance (*T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*).

Given the aforementioned factors contributing to the complexity of the proposed rule, we conclude that there is good cause, consistent with 50 CFR 424.16(c)(2), to extend the public comment period by an additional 120 days, which will allow sufficient time for responders to submit comments without significantly delaying finalization of the proposed rule. We are, therefore, extending the close of the public comment period from October 23, 2024, to February 19, 2025.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 17, 2024.

Samuel D. Rauch III,

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

[FR Doc. 2024–24533 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 241018–0275]

RIN 0648–BN15

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 34; Groundfish Exclusion Area for Coral Research and Restoration

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues these proposed regulations to implement amendment 34 to the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP). The proposed regulations include a closure to commercial groundfish bottom contact gear in Monterey Bay National Marine Sanctuary (MBNMS). Specifically, NMFS proposes to implement a new groundfish exclusion area (GEA) for the purposes of coral research and restoration within MBNMS at the site of Sur Ridge. The purpose of this proposed action is to close the Sur Ridge site within the MBNMS off California to commercial groundfish bottom contact gear in order to protect future deep-sea coral research and restoration projects from the impact of fishing gear. The Office of National Marine Sanctuaries (ONMS) conducts scientific research in National Marine Sanctuaries, including on deep sea coral survival, growth and reproduction, under the National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on this proposed rule must be received on or before November 22, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0081>. You may

submit comments on this document, identified by NOAA–NMFS–2024–0081, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type NOAA–NMFS–2024–0081 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, etc.), 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).

Electronic copies of proposed amendment 34 and the draft analysis that addresses Presidential Executive Order 12866, the Regulatory Flexibility Act (RFA), and the statutory requirements of the Magnuson-Stevens Act (the Analysis), may be obtained from <https://www.regulations.gov> and the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/region/west-coast>.

FOR FURTHER INFORMATION CONTACT:

Megan Mackey, 206–526–6140, megan.mackey@noaa.gov.

SUPPLEMENTARY INFORMATION: The Pacific Coast groundfish fishery in the U.S. exclusive economic zone (EEZ) seaward of Washington, Oregon, and California is managed under the Groundfish FMP. The Council developed the Groundfish FMP pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The Secretary of Commerce approved the Groundfish FMP and implemented the provisions of the plan at 50 CFR part 660, subparts C through G. Species managed under the Groundfish FMP include more than 90 species of groundfish, flatfish, rockfish, sharks, and skates.

This proposed rule (also referred to interchangeably as “this proposed action”) would implement regulations for amendment 34 to the Groundfish FMP. Consistent with Magnuson-Stevens Act section 303(c)(1), the Council deemed the proposed regulations consistent with and necessary to implement amendment 34 in an October 1, 2024 letter from

Council Chairman, Merrick Burden, to Regional Administrator, Jennifer Quan. The Notice of Availability for amendment 34 that published on October 9, 2024 (89 FR 81878) describes the details of the Groundfish FMP changes established through this proposed action. NMFS is concurrently seeking comment on the Council’s proposed measures in amendment 34.

Background

The Council met over 2023 and 2024 to consider developing fisheries closures for deep-sea coral restoration and research in response to a request from the ONMS. ONMS conducts scientific research in National Marine Sanctuaries, including within MBNMS, under the NMSA and the Magnuson-Stevens Act.

In September 2023, ONMS presented a scoping paper that posed 5 locations with 10 sites within Greater Farallones National Marine Sanctuary and MBNMS, for deep seas coral restoration and research (section 1.2 of the Analysis). At that meeting, the Council chose to continue to scope closures in MBNMS only, at the locations of Año Nuevo and Ascension Canyons (two sites) and Sur Ridge (one site), for areas to conduct coral research and restoration. The Council proposed that these areas could be closed to bottom contact gears as GEAs. GEAs were established by amendment 32 to the Groundfish FMP (88 FR 83830, December 1, 2023) and are a management tool intended to mitigate the impacts to sensitive environments from certain groundfish fishing activity.

At the March 2024 meeting, the Council adopted a range of alternatives for this proposed action that included modified versions of the Año Nuevo and Ascension Canyon sites to address concerns raised by the public regarding closing off key fishing grounds shallower than 400 fathoms (fm) and enforcement concerns (section 1.2 of the Analysis). The Council also confirmed that the potential sites would only be proposed to be closed to commercial groundfish bottom contact gears and that no other gear types or fisheries would be proposed in the closures.

At the June 2024 meeting, the Council adopted its final preferred alternative to develop a GEA for commercial groundfish bottom contact gear at Sur Ridge in MBNMS. If the GEA is established, it is expected that ONMS would begin deep-sea coral outplanting at Sur Ridge in 2025.

The proposed GEA at Sur Ridge would apply to commercial groundfish vessels using bottom contact gear. Currently, the GEA area is within a

bottom trawl essential fish habitat conservation area (EFHCA), and therefore no bottom trawling is permitted. If the EFHCA were to be removed in the future, the GEA would continue to prohibit bottom trawl. The GEA would create new restrictions for non-trawl commercial groundfish vessels using bottom contact gears in the limited entry fixed gear, directed open access, and shore-based individual fishing quota sectors. Vessels using non-bottom contact gear would still be permitted to operate in the area. The proposed GEA would close 36.64 square nautical miles of area, with depths ranging from 2,690 to 5,118 feet (448 to 853 fm). Overall, this proposed GEA would allow ONMS to perform deep-sea coral research and restoration while having limited impact on the groundfish fisheries.

Amendment 34

NMFS is proposing amendment 34 to the Groundfish FMP in alignment with the Council's recommendation in June 2024. Amendment 34 would revise the description of GEAs in the FMP to remove references to specific GEAs, consistent with how other closed area types are included in the FMP. Active GEAs would instead be noted in the Federal groundfish regulations at proposed § 660.70, and the history of a specific GEA would likely be provided in the groundfish Stock Assessment Fishery Evaluation document.

Proposed Rule

In addition to revising the description of GEAs under amendment 34, in alignment with the Council's recommendation, NMFS proposes regulations to modify the use of GEAs as a management tool in the following ways. This proposed rule would:

- Add GEAs to the general groundfish prohibitions found at § 660.12;
- Revise the descriptions of GEAs found in §§ 660.230, 660.330, and 660.360 to remove the specific references to the Southern California Bight; and,
- Establish a new GEA at Sur Ridge in MBNMS.

To add GEAs to the general groundfish prohibitions found in the regulations, this proposed rule would add proposed § 660.12(a)(22) to the list of prohibitions in § 660.12(a) to clarify that it is unlawful for fishermen to violate any regulations that apply to activity in GEAs. To revise the descriptions of GEAs in regulations, this proposed rule would update §§ 660.230, 660.330, and 660.360 to remove specific references to the Southern California Bight and generalize the GEA

descriptions to allow for GEAs to be located more broadly. This proposed rule would also update the GEA description at § 660.70(t) to note that there would be a total of nine GEAs and to remove the specific reference to GEAs being areas south of Point Conception, California. And, finally, this proposed rule would add § 660.70(t)(9) to the list of GEAs found in that section and would include the latitude and longitude coordinates and other information relevant to establishing the proposed Sur Ridge GEA.

Classification

Pursuant to sections 303(C) and 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES** section). NMFS is recommending amendment 34 and the regulatory revisions in this proposed rule based on its assessment of the net benefits to the Nation of these measures.

Regulatory Flexibility Act

NMFS has recommended that the Chief Counsel for Regulation of the Department of Commerce certify to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant adverse economic impact on a substantial number of small entities.

For purposes of the RFA (5 U.S.C. 601 *et seq.*) only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. This standard applies to all businesses classified under North American Industry

Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses (50 CFR 200.2; 13 CFR 121.201).

All commercial groundfish participants that use bottom contact gear for fisheries in the EEZ off Washington, Oregon, and California, which are managed under the Groundfish FMP, may be affected by this proposed rule. Bottom contact gear is defined at 50 CFR 660.11: "fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (*e.g.* by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart."

This list is non-exhaustive. The proposed coral research and restoration area is within existing bottom trawl EFHCAs, which prohibit all bottom trawl gears from operating within those EFHCA boundaries. Given that these areas are currently closed to bottom trawl vessels, this action would establish no new impact to those vessels. Therefore, the proposed action would impact only fishing with non-trawl bottom contact gear types within the proposed GEA at Sur Ridge. The commercial gears that would be permitted to operate within the newly closed area, as currently proposed, are midwater trawl and select non-trawl gear types (troll gear and commercial vertical hook-and-line gear not anchored to the bottom, such as vertical jig gear or rod-and-reel gear with weights suspended off the bottom).

From 2019 to 2023, there were 429 distinct vessels that utilized non-trawl bottom contact gears¹ in the 3 commercial groundfish sectors (directed open access (OA), limited entry fixed gear (LEFG), and individual fishing quota (IFQ) gear switching) with an annual average of 175 vessels operating annually (table 1) between the latitudes of 40° 30' N and 36° N. As described in section 3.5.2 of the Analysis, this is the catch area that encompassed the three coral restoration and research areas

¹ Vessels were selected based on FOS_Groundfish_Sector_Codes of "Catch Shares", "LE Fixed Gear Daily Trip Limit", "Limited entry Sablefish", and "OA Fixed Gear" and were not declared (using declaration code) associated with non-bottom contact gears.

proposed within MBNMS in late 2023. The Council ultimately only recommended one offshore area to move forward as a GEA. Therefore, the estimated values here are expected to reflect the maximum number of vessels that could potentially be affected by this proposed action. The actual number is likely lower. The majority of affected vessels would participate in the directed OA fishery. To protect the confidentiality of vessel data, IFQ gear switching vessels were combined with LEFG vessels in table 1.

TABLE 1—RANGE OF VESSELS BY FISHERY SECTOR
[2019–2023]

Fishery sector	Range	Average
OA	130–172	149
LEFG/IFQ	24–29	26

For purposes of this analysis, directed OA vessels are assumed to be small entities, with ex-vessel revenues for all landings (groundfish and non-groundfish) averaging \$71,959. In 2023, 26 of the 29 LEFG permits associated with vessels that would likely be subject to this action (*i.e.*, required to fish in the primary or LE trip limit fisheries) were owned by small entities (self-reported). For gear switching vessels likely to be affected by this action, all were reported as small entities in 2023.

Note that there is not a strict one-to-one correlation between vessels and entities, nor between permits and entities; therefore, some persons or firms likely have ownership interests in more than one vessel or permit. Therefore, the actual number of entities regulated by this proposed action may be lower than the estimates presented here.

If the proposed area to be closed is key to the affected parties' fishing, and if there are limited replacement fishing opportunities available, the economic impact of the proposed action may disproportionately affect small entities compared to large entities and may result in some profit loss. Given other likely current and future fishing restrictions impacting the relevant catch area (*e.g.*, nearshore restrictions north of the area and limited or non-existent salmon seasons), offshore opportunities are likely to be of greater importance in the portfolios of California fishing vessels. However, given the limited documented historical fishing activity at Sur Ridge and the depth of the proposed closure, it is likely that a limited subset of vessels might be impacted. Additionally, these vessels could

potentially move to other fishing areas to maintain similar harvest opportunities.

Therefore, although this action would apply to the entirety of all entities fishing with bottom contact gear within the proposed GEA and the majority of those entities are considered small entities, because there has been limited documented fishing activity in the Sur Ridge area and because bottom trawl gear is currently prohibited within the proposed GEA under the EFHCA, this proposed rule is expected to have a limited impact on a modest number of small entities. For these reasons, NMFS believes that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 18, 2024.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. Amend § 660.12 by adding paragraph (a)(22) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(22) Fish for, take and retain, possess (except for the purpose of continuous transit), or land any species of groundfish in the GEAs as defined at § 660.11 with coordinates defined at § 660.70.

* * * * *

■ 3. Amend § 660.70 by revising the introductory text of paragraph (t) and adding paragraph (t)(9) to read as follows:

§ 660.70 Groundfish conservation areas.

* * * * *

(t) *Groundfish Exclusion Areas.* The Groundfish Exclusion Areas (GEAs) include nine areas off the coast of California intended to protect sensitive areas, including areas with coral and sea pens. GEAs are closed to both commercial and recreational groundfish fisheries unless otherwise noted.

* * * * *

(9) *Sur Ridge.* The Sur Ridge GEA is closed to commercial groundfish bottom contact gear only and is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 36°26.00' N lat., 122°20.81' W long:

(i) 36°26.00' N lat., 122°20.81' W long.;

(ii) 36°25.55' N lat., 122°15.23' W long.;

(iii) 36°21.71' N lat., 122°15.32' W long.;

(iv) 36°17.95' N lat., 122°17.13' W long.;

(v) 36°16.42' N lat., 122°16.69' W long.; and

(vi) 36°16.41' N lat., 122°20.76' W long.

* * * * *

■ 4. Amend § 660.230 by revising paragraphs (a) and (d)(17) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in tables 2 (North) and 2 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see trip limits in tables 2 (North) and 2 (South) of this subpart and sablefish primary season details in § 660.231), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79). Cowcod retention is prohibited in all fisheries, and groundfish vessels must adhere to GEA restrictions (see paragraph (d)(17) of this section and § 660.70). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing tier limits for the limited entry, fixed gear sablefish primary season north of lat. 36° N are found in § 660.231. Vessels not participating in the sablefish primary season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The

trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.230(e). The trip limits in tables 2 (North) and 2 (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

* * * * *

(d) * * *

(17) *Groundfish exclusion areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited. It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs. All fishing gear for targeting groundfish must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, then no groundfish may be on board the vessel.

* * * * *

■ 5. Amend § 660.330 by revising paragraphs (a) and (d)(19) to read as follows:

§ 660.330 Open access fishery—management measures.

(a) *General*. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see trip limits in tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see seasons in tables 3 (North) and 3 (South) of this subpart), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries, and groundfish vessels must adhere to GEA restrictions (see paragraph (d)(19) of this section and § 660.70). Retention of yelloweye rockfish is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, see § 660.332 of this subpart and the trip limits in tables 3 (North) and 3 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if

the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see paragraph (e) of this section. Open access vessels that fish with non-groundfish trawl gear or in the salmon troll fishery north of lat. 40°10' N are subject the cumulative limits and closed areas (except the pink shrimp fishery which is not subject to RCA restrictions) listed in tables 3 (North) and 3 (South) of this subpart.

* * * * *

(d) * * *

(19) *Groundfish exclusion areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited. It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs. All fishing gear for targeting groundfish must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, then no groundfish may be on board the vessel.

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■ 6. Amend § 660.360 by revising paragraph (c)(3)(i)(B) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) *Groundfish exclusion areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited. It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs. Recreational fishing gear for targeting groundfish may not be deployed while transiting through a GEA. If fishing for non-groundfish species within a GEA, then no groundfish may be on board the vessel.

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[FR Doc. 2024–24556 Filed 10–22–24; 8:45 a.m.]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 241017–0274]

RIN 0648–BM77

Fisheries of the Exclusive Economic Zone; Authorizing Hook-and-Line Catcher/Processors To Use Longline Pot Gear in the Bering Sea Greenland Turbot Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would authorize hook-and-line catcher/processors (C/Ps) to use longline pot gear when directed fishing for Greenland turbot in the Bering Sea (BS) subarea of the Bering Sea and Aleutian Islands (BSAI). This proposed rule is necessary to improve efficiency, provide economic benefits for the hook-and-line C/P sector, and minimize potential fishery interactions with killer whales. This proposed rule would promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and other applicable laws.

DATES: Submit comments on or before November 22, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2023-0156>. You may submit comments on this document, identified by NOAA–NMFS–2023–0156 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2023–0156 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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, etc.), 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).

Electronic copies of the Environmental Assessment and Regulatory Impact Review (RIR) (collectively “the Analysis”) prepared for this action are available on <https://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS and on <https://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:

Andrew Olson, 907–586–7228, andrew.olson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. The Council and NMFS manage Greenland turbot (*Reinhardtius hippoglossoides*) as a groundfish species under the BSAI FMP. Section 3.4 of BSAI FMP identifies authorized gear types for groundfish fisheries as trawls, hook-and-line, pots, jigs, and other gear as defined in regulations. This section also states that further restrictions on gear which are necessary for conservation and management of fishery resources and which are consistent with the goals and objectives of the FMP are found at 50 CFR part 679.

Background

The following background sections describe (1) the Greenland turbot directed fishery; (2) authorized gear; (3) whale depredation; and (4) groundfish maximum retainable amounts (MRAs).

Greenland Turbot Directed Fishery

The directed fishery for Greenland turbot is managed under the BSAI FMP and is divided into two fishing subareas: (1) the BS; and (2) the Aleutian Islands (AI). Under the BSAI FMP, the acceptable biological catch (ABC) of Greenland turbot is allocated between the BS and AI subareas based on the proportion of biomass in each area. Annually, in the BSAI groundfish harvest specifications, NMFS establishes a total allowable catch (TAC) for Greenland turbot that is apportioned between the BS and AI subareas based on the TAC recommended by the Council (89 FR 17287, March 11, 2024). Under § 679.23(e)(1), directed fishing for Greenland turbot is authorized from May 1 through December 31 and NMFS closes the fishery if the TAC is reached prior to the season end date. The Greenland turbot directed fishery is a relatively small fishery with low TACs and the area where the fishery occurs in the BS and AI subareas (as described in section 3.3.2 of the Analysis (see **ADDRESSES** section)) is very remote, making it difficult to prosecute the fishery.

Under the Western Alaska Community Development Quota (CDQ) Program, § 679.20(b)(1)(ii)(D) requires that NMFS allocate 10.7 percent of the BS subarea Greenland turbot TAC to the CDQ reserve. CDQ allocations of BS subarea Greenland turbot may be fished by either trawl or nontrawl vessels. CDQ groups may arrange for the CDQ reserve to be fished by companies or on vessels in which they have an ownership stake, or they might make the CDQ reserve available to be fished by any permitted vessel and receive a royalty permit in return as described in section 3.3.1 of the Analysis (see **ADDRESSES** section). CDQ fishing for Greenland turbot is authorized from January 1 through December 31 (§ 679.23(e)(4)(iii)).

Vessels participating in the directed fishery for Greenland turbot in the BS subarea are required to have a groundfish license limitation program (LLP) license with the necessary gear (i.e., nontrawl, trawl, or both gear types) and BS subarea endorsements (see § 679.4(k)(1)(i)). The directed fishery for Greenland turbot is prosecuted by the trawl and nontrawl sectors and is mainly concentrated in the BS subarea, which is the focus of this proposed rule. The Greenland turbot fishery in the AI subarea has been closed to directed fishing in all years from 2013 through 2024 due to relatively low TACs. Additionally, several factors have contributed to low interest in developing this fishery such as lower

local abundance, poorer fish quality resulting in lower value products, and higher operating costs.

Participants in the Greenland turbot trawl fishery consist exclusively of Amendment 80 vessels. The Amendment 80 Program allocated several BSAI non-pollock trawl groundfish species among trawl fishery sectors, facilitated the formation of harvesting cooperatives in the non-American Fisheries Act (non-AFA) trawl C/P sector, and established a limited access privilege program for the non-AFA trawl C/P sector (72 FR 52668, September 14, 2007). This proposed rule does not change regulations applicable to the Amendment 80 Program.

The majority of participants in the nontrawl Greenland turbot fishery are hook-and-line C/P vessels. Hook-and-line C/P vessels, as defined in the regulations at § 679.2, are vessels named on LLP licenses that are noninterim and transferable, or that are interim and subsequently become noninterim and transferable, and that are endorsed for BS subarea or AI subarea C/P fishing activity, C/P Pacific cod (*Gadus macrocephalus*), and hook-and-line gear. As a broad category of vessels, hook-and-line C/Ps primarily target Pacific cod in the CDQ and non-CDQ fisheries in the BSAI, and may also participate in the Greenland turbot and sablefish fisheries, as well as groundfish fisheries in the Gulf of Alaska (GOA). Catcher vessels (CVs), on the other hand, have rarely targeted Greenland turbot in the BS subarea. This is due to the remoteness of the area where the fishery occurs and characteristics of Greenland turbot flesh that would degrade and lose value in the time required to make a shoreside landing, as CVs are vessels used for catching fish and do not process fish on board. Vessel LLP licenses have endorsements for operation type and are either CV or C/P. A C/V endorsement allows a vessel to harvest, but not process fish on board, while a C/P endorsement allows a vessel to harvest and on board processing.

Most hook-and-line C/P vessels are members of the Freezer Longline Conservation Cooperative (FLCC). The FLCC is a voluntary cooperative represented by the Freezer Longline Coalition that comprises 36 LLP license holders endorsed for BS or AI subarea hook-and-line C/P fishing for Pacific cod. Cooperatives allow fishery participants to coordinate their collective fishing operations, and benefit from the resulting efficiencies. Since the formation of the FLCC in 2010, the sector has operated what could be considered a “year-round” Pacific cod fishery. Historically, only a

small portion of these LLP licenses endorsed for BS or AI subarea hook-and-line C/P fishing for Pacific cod have targeted Greenland turbot in the BS subarea, and, since 2010, the number has not surpassed nine vessels.

The Amendment 80 cooperatives and FLCC coordinate to harvest the BS subarea Greenland turbot non-CDQ TAC using a voluntary, non-regulatory agreement to divide the available TAC between the trawl and nontrawl sectors. The specific terms of the agreement are not publicly disclosed or shared with NMFS; however, NMFS understands that the TAC is apportioned between the trawl and nontrawl sectors to maximize utilization and account for incidental catch in other fisheries. NMFS understands that the agreement was developed in response to competition between the sectors and the need for NMFS to manage the fishery conservatively, due to bycatch of Greenland turbot in trawl fisheries targeting arrowtooth (*Atheresthes stomias*) and Kamchatka flounder (*A. evermanni*) that resulted in shorter seasons and early closures of the Greenland turbot directed fishery.

Authorized Gear

Gear endorsements for BSAI groundfish LLP licenses are either for trawl, nontrawl, or both gear types (see § 679.4(k)(3)(iv)). Nontrawl gear is any legal gear type, other than trawl gear, used to harvest groundfish under the LLP (see § 679.4(k)(3)(iv)(F)). The use of nontrawl gear is limited to longline and pot gear, with longline gear encompassing hook-and-line gear, and pot gear including both longline pot and pot-and-line gear (e.g., single pot). Longline pot gear is pot gear with two or more pots attached to a stationary, buoyed, and anchored line while pot-and-line gear is pot gear with a stationary, buoyed line with a single pot attached. Although pot-and-line gear is currently authorized for the directed fishery for Greenland turbot in the BS subarea, pot-and-line gear has not been utilized due to the inefficiency of setting a single pot at the depths and locations where the fishery occurs. Pot gear, which includes longline pot and pot-and-line gear, is required to have a biodegradable panel that measures at least 18 inches in length, parallel to, and within 6 inches of, the bottom of the pot, and that is sewn with untreated cotton thread no larger than No. 30. This requirement ensures the release of caught fish if pot gear is lost or becomes unretrievable. Collapsible pots, also called slinky pots, are used as longline pot gear in the IFQ and CDQ halibut (*Hippoglossus stenolepis*) and sablefish

(*Anoplopoma fimbria*) fisheries. Collapsible pots have an exception to the placement of the biodegradable panel when used in these fisheries, whereby the panel may be placed anywhere on the mesh of the pot, which is at least 18 inches (45.72 cm) in length and is made from untreated cotton thread of no larger size than No. 30, or wrapped on the pot door, provided the pot door has a minimum diameter of 18 inches and is sewn with untreated cotton thread no larger than No. 30. Gear limitations at § 679.24(b) require any person using longline pot gear to treat any catch of groundfish species as prohibited species unless there is an explicit exception that allows the use of this gear type by area and fishery. The exceptions to the longline pot gear limitation set forth in § 679.24(b)(1) include fishing in the AI subarea, fishing for sablefish in the BS subarea, fishing for sablefish individual fishing quota (IFQ) in the GOA, and while fishing for IFQ or CDQ halibut in the BSAI (§ 679.24(b)). For additional information on authorized fishing gear including trawl, nontrawl, longline, hook-and-line, pot-and-line, and longline pot gear see the definition of “Authorized fishing gear” at § 679.2.

Regulations at § 679.24(a) require any vessel fishing with hook-and-line, longline pot, and pot-and-line gear to mark all buoys carried on board or used with the vessel’s federal fisheries permit (FFP) number or Alaska Department of Fish and Game (ADF&G) vessel registration number. Buoy markings have minimum text width and height specifications and must be of contrasting coloring so markings are clearly visible above the water line. Vessel operators deploying longline pot gear to fish IFQ sablefish in the GOA are required to have an additional hard buoy ball in the buoy cluster attached and marked with the initials “LP” for “Longline Pot” to distinguish buoys for hook-and-line and pot-and-line gear from buoys for longline pot gear (§ 679.24(a)).

A pot used to fish for groundfish is required to have tunnel openings no wider and no higher than 9 inches as defined in paragraph (15)(ii) of the definition of “Authorized fishing gear” at § 679.2. In 2020, the Council recommended and NMFS implemented an exception to the 9-inch tunnel opening restriction for halibut, which is also a large flatfish species, under amendment 118 to the BSAI FMP (85 FR 840, January 8, 2020). This action was intended to improve capture efficiency in legal sized halibut using pot gear when fishing for IFQ and CDQ halibut and IFQ and CDQ sablefish in the BSAI

or sablefish IFQ in the GOA when halibut retention is required, decrease the potential for discards, and whale depredation. For additional information on longline pot gear restrictions, see “Gear Limitations” at § 679.24(b).

Whale Depredation

Depredation by killer whales (*Orcinus orca*) has been increasing, preventing hook-and-line C/P vessels from participating in the directed fishery for Greenland turbot in the BS subarea. Whale depredation occurs when whales remove or damage fish during hauling or feed on fish being caught or discarded. Whale depredation negatively impacts fishing fleets by reducing catch rates and increasing operational costs. Additionally, depredation has negative consequences for whales through increased risk of vessel strikes, gear entanglements, and altered foraging strategies. Depredation by sperm and killer whales on hook-and-line gear is a common occurrence for the sablefish IFQ fishery in the GOA and BSAI where whales can completely remove or damage sablefish captured on hooks before the gear is retrieved. Killer whale depredation resulted in the decline in participation by hook-and-line C/P vessels in the directed fishery for Greenland turbot in the BS subarea beginning in 2018, and the complete absence of participation in 2021, 2022, and 2023, due to operational challenges posed by whale depredation that made fishing uneconomical as described in section 4 of the Analysis (see **ADDRESSES** section). The Council recommended and NMFS allowed the use of longline pot gear in the GOA sablefish IFQ fishery to improve efficiency and improve economic benefits for the sablefish IFQ fleet impacted by whale depredation (amendment 101 to the GOA FMP; 81 FR 95435, December 28, 2016). For more information about killer whale depredation on hook-and-line C/Ps in the BS subarea, refer to section 3.4 of the Analysis (see **ADDRESSES** section).

Groundfish Maximum Retainable Amounts (MRAs)

An MRA limits the retention of incidental catch species that are caught while targeting other species or species groups—known as basis species—open to directed fishing (§ 679.20(e)). Under § 679.2, the definition of “directed fishing” means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the MRA for that species or species group as calculated under § 679.20(e). MRAs establish retainable percentages to allow for the retention of incidental catch,

preventing regulatory discards and increasing the utilization of incidental catch of a species when the fishery is closed to directed fishing. MRAs help manage the harvest of a groundfish species within its annual TAC. Once the TAC for a species is reached, retention of that species is prohibited, and any further catch must be discarded. To ensure sufficient amounts of the TAC are available for incidental catch in other fisheries, NMFS closes a species to directed fishing before the entire TAC is harvested.

Gear limitations require any person using longline pot gear to treat any catch of groundfish species as a prohibited species unless there is an explicit exception that allows the use of this gear type by area and fishery (§ 679.24(b)(1)). Under current regulations, longline pot gear is allowed in the BSAI for directed fishing for sablefish in the BS subarea, which means retaining sablefish on board a vessel in an amount greater than the MRA. The MRA for sablefish is currently set at 15 percent when the basis species is Greenland turbot in the BSAI (Table 11 to part 679). If a vessel is directed fishing for Greenland turbot, retention of sablefish would be allowed only if the vessel held enough sablefish IFQ to possess more than the 15 percent MRA limit, otherwise sablefish may not be retained as described in section 6.3 of the Analysis (see **ADDRESSES** section). A vessel may retain Greenland turbot up to the MRA in other groundfish fisheries where longline pot gear is authorized unless retention of Greenland turbot is prohibited because a TAC has been met.

Need for Action

This proposed rule would allow hook-and-line C/P vessels to use longline pot gear to directed fish for Greenland turbot in the BS subarea. This proposed rule is needed to mitigate impacts of killer whale depredation and increase operational flexibility and efficiency for hook-and-line C/P vessels who have historically participated in the directed fishery for Greenland turbot using hook-and-line gear in the BS subarea. Since 2020, killer whale depredation has increased, reducing or preventing participation in the directed fishery for Greenland turbot in the BS subarea by hook-and-line C/P vessels. Using longline pot gear could effectively mitigate killer whale depredation in the directed fishery for Greenland turbot in the BS subarea and improve efficiency and economic benefits for hook-and-line C/P vessels, as it would be more difficult for whales to remove or damage fish enclosed in pots. Greenland turbot is a large flatfish species and this

proposed rule would also add an exception to the 9-inch tunnel opening restriction for longline pot gear to remove a potential impediment for selecting larger fish, and improve fishing efficiency, when participating in the directed fishery for Greenland turbot in the BS subarea.

In April 2021, the Council tasked staff with preparing a discussion paper on authorizing longline pot gear as a legal gear type for the directed fishery for Greenland turbot in the BS subarea. This request responded to the Council Advisory Panel recommendation that longline pot gear could effectively mitigate killer whale depredation of Greenland turbot on hook-and-line gear. The Council reviewed the discussion paper at its February 2022 meeting, developing an initial purpose and need statement and a single action alternative that would authorize longline pot gear for any LLP license holder with BS nontrawl endorsements. At that time, the Council also introduced an option to exempt the 9-inch maximum pot tunnel opening limitation when fishing for Greenland turbot in the BS subarea.

In October 2022, the Council considered the initial review of this action and heard public testimony, modifying the purpose and need statement to evaluate the potential disruption to historic participants in the nontrawl Greenland turbot fishery if new entrants with no previous activity in the fishery were to participate. The Council added an alternative that would narrow the action to authorize longline pot gear in the directed fishery for Greenland turbot in the BS subarea only for hook-and-line C/P vessels as defined in regulation (§ 679.2). In April 2023, the Council recommended that NMFS authorize the use of longline pot gear and remove the 9-inch pot tunnel opening restriction for hook-and-line C/P vessels participating in the directed fishery for Greenland turbot in the BS subarea. The other revisions included in this action were presented in the Analysis (see **ADDRESSES** section) as necessary to implement the preferred alternative.

This action applies exclusively to vessels whose LLP licenses qualify them as participants in the hook-and-line C/P sector who have historically participated in and comprise the nontrawl sector directed fishery for Greenland turbot in the BS subarea. This action is intended to increase operational flexibility for hook-and-line C/P vessels in the BS subarea, mitigate the impacts of whale depredation, and allow the fishery to resume. The directed fishery for Greenland turbot in the BS subarea is a small, remote fishery

with low TACs, making it viable primarily for hook-and-line C/Ps. Due to the remoteness of the fishing grounds and the nature of Greenland turbot flesh, which can degrade and lose value during the time needed for shoreside landings, participation by CVs is unlikely. This action is not intended to create opportunities for new entrants without previous history in the fishery, as their participation could disrupt the established hook-and-line C/P and Amendment 80 sectors. New entrants might also pose challenges to maintaining a fishing pace that allows NMFS to effectively manage the fishery, especially in environments with moderate to low TACs. However, this action does not preclude CVs from participating in the Greenland turbot fishery in the BS subarea, as they can still participate in the fishery with hook-and-line or pot-and-line gear.

This Proposed Rule

This proposed rule would revise regulations at 50 CFR part 679 to: (1) allow hook-and-line C/P vessels to use longline pot gear for the directed fishery for Greenland turbot in the BS subarea; (2) add the directed fishery for Greenland turbot in the BS subarea to the collapsible pot exception; (3) add an exception to the 9-inch maximum pot tunnel opening limitation for longline pot gear when participating in the directed fishery for Greenland turbot in the BS subarea; and (4) clarify MRA retention requirements for longline pot gear with the authorization of this gear type for the directed fishery for Greenland turbot in the BS subarea. The following sections describe the proposed changes to the regulations.

Authorize Longline Pot Gear

This proposed rule would amend regulations at § 679.24(b)(1) to allow hook-and-line C/P vessels to use longline pot gear to retain groundfish species while directed fishing for Greenland turbot in the BS subarea. This proposed rule would also amend longline pot gear for gear marking requirements at § 679.24(a)(3) and recordkeeping and reporting requirements at § 679.5(c)(3)(v)(G)(2). These modifications would expand the use of longline pot gear to include directed fishing for Greenland turbot in the BS subarea, alongside the areas and fisheries where this gear type is already authorized and add associated gear marking, recordkeeping, and reporting requirements consistent with those already applicable when using longline pot gear in the GOA.

Gear marking requirements would be added for vessels using longline pot gear

to directed fish for Greenland turbot in the BS subarea at § 679.24(a)(3). These changes would require that each end of longline pot gear set deployed must have one hard buoy ball attached and marked with the capital letters “LP” to differentiate between whether a set is hook-and-line or longline pot gear in accordance with marking requirements specified at § 679.24(a)(2). Regulations at § 679.5(c)(3)(v)(G)(2) governing the logbook requirements for longline pot gear would be modified to require that the length of the longline pot set, size of pots used, the spacing between pots on a set, and the quantity of pots deployed and lost be recorded on a logbook by vessels while directed fishing for Greenland turbot in the BS subarea. The use of longline pot gear continues to expand, and these changes are intended to improve regulatory consistency, monitoring, and enforcement with the addition of longline pot gear being authorized for hook-and-line C/Ps participating in the directed fishery for Greenland turbot in the BS subarea.

Collapsible Pot Exception

This proposed rule would add the directed fishery for Greenland turbot in the BS subarea to the current list of fisheries authorized to place a biodegradable panel anywhere on the mesh of a collapsible pot, also called a slinky pot, as specified in paragraph (15)(i)(A) of the definition of “Authorized fishing gear” at § 679.2. Collapsible pot gear must have a biodegradable panel placed anywhere on the mesh using untreated cotton thread no longer than No. 30, which is at least 18 inches in length, or may be wrapped on the door of a pot that is at least 18 inches in diameter. Including Greenland turbot in the BS subarea in the collapsible pot exception is necessary to allow vessels to use this type of pot under the proposed rule authorizing longline pot gear. This change will facilitate the effective escapement of fish if a pot is lost and will standardize gear requirements for pot gear.

Tunnel Opening Exception for Greenland Turbot

This proposed rule would add an exception to the longline pot tunnel opening restriction specified in paragraph (15)(ii) of the definition of “Authorized fishing gear” at § 679.2 to allow the use of pots with tunnel openings larger than 9 inches when directed fishing Greenland turbot in the BS subarea. This is necessary to ensure that the pot gear used in this fishery is not size-selective for smaller Greenland

turbot and allow for larger fish to enter the pots. Additionally, this proposed rule would move the current regulatory paragraph that specifies the existing halibut retention exception from paragraph (15)(iii) to paragraph (15)(ii) under the definition of “Authorized fishing gear” at § 679.2 to improve regulatory clarity and organization for fisheries that have exceptions to the pot tunnel opening restriction.

Longline Pot Gear MRAs

Removal of the gear restriction that prevents retention of groundfish species by vessels using longline pot gear in the BS subarea when directed fishing for Greenland turbot would also allow these vessels to retain up to the MRA of other groundfish species unless retention is prohibited or required by other applicable law. This proposed rule would add a paragraph at § 679.20(e)(3)(vii) to clarify that vessels using longline pot gear can retain groundfish up to the MRA.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared an Environmental Assessment for this regulatory amendment that discusses the impact on the environment as a result of this rule. The proposed rule is considered to have minimal impact due to its narrow scope and alignment with the existing fishery management frame-work and is unlikely to significantly affect the environment or species beyond the status quo. A copy of the Environmental Assessment is available from the NMFS (see **ADDRESSES** section).

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

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES** section). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation.

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS requests comments on this certification for this proposed rule. The factual basis for this determination is as follows:

This proposed rule would allow owners and operators of hook-and-line C/P vessels to use longline pot gear to directed fish for Greenland turbot in the BS subarea. A discussion of the potential impacts of the proposed action is further discussed in section 4 of the Analysis (see **ADDRESSES** section).

For Regulatory Flexibility Act (RFA) purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts less than \$11 million for all its affiliated operations worldwide. The RFA also requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis. NMFS has determined that vessels that are members of a fishing cooperative are affiliated when classifying them for purposes of the RFA. During the 2012 through 2022 period, there were 23 active vessels that had participated in the BSAI groundfish fishery as a C/P using hook-and-line or pot gear. None of those vessels are considered small entities due to cooperative affiliation. For the purpose of this RFA analysis, NMFS believes that all of the entities directly regulated under the Council's preferred alternative are large entities.

This action increases flexibility and operational efficiency. It is anticipated that this action would improve cost-efficiencies for directly regulated entities to a marginal degree. This action allows a different gear type that could make the nontrawl fishery more successful to the extent they choose to use that gear. Use of the gear is voluntary and not mandatory. As a voluntary efficiency, entities would participate, and thus be directly regulated, but only if there is a net benefit to doing so.

For these reasons, this action is not expected to have an adverse economic impact on a substantial number of small entities, and, as a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule would revise the existing collection-of-information requirements for OMB Control Number 0648–0515 (Alaska Interagency Electronic Reporting System) and revise and extend by 3 years the existing requirements for OMB Control Number 0648–0353 (Alaska Region Gear Identification Requirements). The proposed changes to the collections are described below. The public reporting burden estimates provided below include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

a. OMB Control Number 0648–0353

NMFS proposes to revise and extend for 3 years the existing requirements for OMB Control Number 0648–0353, which contains the gear identification requirements for the groundfish fisheries in the Exclusive Economic Zone off Alaska. The information collection for 0648–0353 would be revised because this proposed rule would require that each end of a set of longline pot gear deployed to directed fish for Greenland turbot in the BS subarea have one hard buoy ball attached marked with “LP” to distinguish this gear type from others authorized for this fishery. This revision adds an estimated nine respondents for marking longline pot gear. Public reporting burden is estimated to average 30 minutes or less per individual response to collect the information and paint it on a buoy. The cost to mark buoys is estimated at \$100 per respondent, which covers materials such as paint, paintbrushes, permanent ink applicator, and stencils. Subject to public comment, no changes are made to the estimated burden or cost because the estimates allow for differences in the time and cost to mark the buoys.

b. OMB Control Number 0648–0515

The information collection for 0648–0515 would be revised because this proposed rule would add the directed fishery for Greenland turbot in the BS

subarea to the recordkeeping and reporting requirements specific to longline pot gear. Vessel operators would be required to enter in the logbook the length of a longline pot set, pot size and spacing, number of pots deployed, and the number of pots lost when the set is retrieved. The hook-and-line C/Ps currently use the C/P electronic logbook. This revision does not change the respondents, responses, burden hours, or costs for the C/P electronic logbook. Public reporting burden is estimated to average 15 minutes per individual response for the C/P electronic logbook. The current burden estimate for this logbook allows for differences in the time and cost needed to complete and submit the logbook.

Public Comment on Collection-of-Information Requirements

NMFS seeks public comment regarding, but not limited to, the following: (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (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, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collections of information at <https://www.reginfo.gov/public/do/PRAMain>.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 18, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2 amend the definition for “Authorized fishing gear” by revising paragraph (15)(i)(A), redesignating paragraph (15)(iii) as paragraph (15)(ii)(A) and adding paragraph (15)(ii)(B). The revision and additions read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(15) * * *

(i) * * *

(A) *Collapsible pot exception.* A collapsible pot (*e.g.*, slinky pot) used to fish for halibut IFQ or CDQ, or sablefish IFQ or CDQ, in accordance with paragraph (4) of this definition, or used to directed fish for Greenland turbot in the Bering Sea subarea of the BSAI, is exempt from the biodegradable panel placement requirements described in paragraph (15)(i) of this definition. Instead, a collapsible pot must have either a biodegradable panel placed anywhere on the mesh of the collapsible pot, which is at least 18 inches (45.72 cm) in length and is made from untreated cotton thread of no larger size than No. 30, or one door on the pot must measure at least 18 inches (45.72 cm) in diameter and be wrapped with untreated cotton thread of no larger size than No. 30.

* * * * *

(ii) * * *

(B) *Greenland turbot exception.* If directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI with longline pots, the tunnel opening requirement under paragraph 15(ii) of this definition does not apply.

* * * * *

■ 3. Revise § 679.5 paragraph (c)(3)(v)(G)(2)(i) and (ii) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(3) * * *

(v) * * *

(G) * * *

(2) * * *

(i) If using longline pot gear in the GOA or while directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI, enter the length of longline pot set to the nearest foot, the size of pot in inches (width by length by height or diameter), and spacing of pots to the nearest foot.

(ii) If using longline pot gear in the GOA or while directed fishing for

Greenland turbot in the Bering Sea subarea of the BSAI, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations see §§ 300.60 through 300.65 of this title).

■ 4. Amend § 679.20 by adding paragraph (e)(3)(vii) to read as follows:

§ 679.20 General limitations.

- (e) * * *
- (3) * * *

(vii) For vessels using longline pot gear pursuant to § 679.24(b), catch may be retained up to the maximum retainable amount unless retention is prohibited or required by other applicable laws.

■ 5. Amend § 679.24 by revising paragraph (a)(3) and adding paragraph (b)(1)(v) to read as follows:

§ 679.24 Gear limitations.

- (a) * * *
- (3) Each end of a set of longline pot gear deployed to fish IFQ sablefish in the GOA, and each end of a set of

longline pot gear deployed to fish for Greenland turbot in the Bering Sea subarea of the BSAI, must have one hard buoy ball attached and marked with the capital letters “LP” in accordance with paragraph (a)(2) of this section.

- (b) * * *
- (1) * * *
- (v) While directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI by hook-and-line catcher/processors.

Notices

Federal Register

Vol. 89, No. 205

Wednesday, October 23, 2024

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

Forest Service

Wenatchee-Okanogan Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Wenatchee-Okanogan Resource Advisory Committee (RAC) will hold two public meetings according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Okanogan-Wenatchee National Forest within Okanogan, Chelan, Kittitas, and Yakima Counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: Two in-person and virtual meetings will be held on November 7, 2024, from 9 a.m.–4 p.m., and November 13, 2024, from 9 a.m.–4 p.m., Pacific Daylight Time.

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual oral comments must pre-register by 11:59 p.m. (Pacific Daylight Time) on November 4, 2024. Written public comments will be accepted by 11:59 p.m. (Pacific Daylight Time) on November 4, 2024. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the

person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: These meetings will be held in-person and virtually at the Okanogan-Wenatchee National Forest Headquarters Office, located at 215 Melody Lane, Wenatchee, Washington. The public may also join virtually via the links that will be posted to the Okanogan-Wenatchee National Forest website. RAC information and meeting details can be found at the following website: https://www.fs.usda.gov/detail/okawen/workingtogether/advisorycommittees/?cid=fsbdev3_053646 or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to Robin.demario@usda.gov or via mail (postmarked) to Robin DeMario, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Pacific Daylight Time, November 4, 2024, and speakers can only register for one speaking slot at each meeting. Oral comments must be sent by email to robin.demario@usda.gov or via mail (postmarked) to Robin DeMario, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801.

FOR FURTHER INFORMATION CONTACT: Victoria Wilkins Designated Federal Officer (DFO), by phone at 509-470-4588 or email at victoria.wilkins@usda.gov or Robin DeMario, RAC Coordinator at 509-664-9292 or email at robin.demario@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals;
2. Make funding recommendations on Title II projects;
3. Approve October RAC meeting minutes;
4. Schedule the next meeting if needed.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least

three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 3 days after the meeting dates listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section, or contact USDA's TARGET Center at (202) 720-2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved

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

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–22688 Filed 10–22–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood-Willamette Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Hood-Willamette Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Mt. Hood and Willamette National Forests within Clackamas, Douglas, Hood River, Jefferson, Lane, Linn, Marion, Multnomah, and Wasco Counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on November 7, 2024, 9 a.m. to 4 p.m. Pacific Standard Time.

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. Pacific Standard Time on November 3, 2024. Written public comments will be accepted by 11:59 p.m. Pacific Standard Time on November 5, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in person at the Keizer Civic Center, located at 930 Chemawa Road Northeast, Keizer, Oregon 97303. The public may also join virtually via

videoconference. Committee information and details about the meeting, including a link to access the meeting, can be found on the advisory committee website at <https://www.fs.usda.gov/detail/willamette/workingtogether/advisorycommittees/?cid=stelprdb5048434> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to eileen.kitayama@usda.gov or via mail (postmarked) to Eileen Kitayama, 3106 Pierce Pkwy, Suite D, Springfield, OR 97477. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Pacific Standard Time on November 3, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to eileen.kitayama@usda.gov or via mail (postmarked) to Eileen Kitayama, 3106 Pierce Pkwy, Suite D, Springfield, OR 97477.

FOR FURTHER INFORMATION CONTACT: Meta Loftsgaarden, Designated Federal Officer, by phone at 971–378–9704 or email at meta.loftsgaarden@usda.gov; or Eileen Kitayama, RAC Coordinator, by phone at 458–245–0170 or email at eileen.kitayama@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect a Chairperson;
2. Hear from Title II project proponents and discuss Title II project proposals;
3. Make funding recommendations on Title II projects;
4. Approve meeting minutes; and
5. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the

USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: October 16, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–24257 Filed 10–22–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE**Natural Resources Conservation Service****[Docket ID NRCS–2024–0012]****Proposed Revisions to the National Handbook of Conservation Practices for the Natural Resources Conservation Service****AGENCY:** Natural Resources Conservation Service, Department of Agriculture (USDA).**ACTION:** Notice of availability; request for comments; Reopening of comment period.**SUMMARY:** The Natural Resources Conservation Service (NRCS) is reopening the comment period for 30 days due to impacts of recent hurricanes to allow the public to provide comments on the specified conservation practice standards to be revised in the National Handbook of Conservation Practices (NHCP) published on September 24, 2024.**DATES:** The comment period for the Notice of availability, request for comments published on September 24, 2024, at 89 FR 77811 is reopened. We will consider comments that we receive by November 24, 2024.**ADDRESSES:** We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID NRCS–2024–0012. Follow the online instructions for submitting comments; or

- *Mail or Hand Delivery:* Mr. J'Que C. Jones, National Agricultural Engineer, Conservation Engineering Division, NRCS, USDA, 1400 Independence Avenue, South Building, Room 4649, Washington, DC 20250. In your comment, please specify the Docket ID NRCS–2024–0012.

All comments received will be made publicly available on <http://www.regulations.gov>.The copies of the proposed revised standards are available through <http://www.regulations.gov> by accessing Docket No. NRCS–2024–0012.**FOR FURTHER INFORMATION CONTACT:** Mr. J'Que C. Jones at (443) 926–6957, or by email at jque.jones@usda.gov. Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both

voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION: NRCS is reopening the comment period on the Notice of availability, request for comments published on September 24, 2024, (89 FR 77811–77812). The comment period for the original notice closed on October 24, 2024. Based on requests received during the initial comment period, NRCS is providing an additional 30 days to allow the public to comment on the specified conservation practice standards to be revised in the NHCP. This will allow more time for the public to adequately review and provide constructive feedback on the proposed revisions to the conservation practice standards.**Louis Aspey,***Associate Chief, Natural Resources Conservation Service.*

[FR Doc. 2024–24512 Filed 10–22–24; 8:45 am]

BILLING CODE 3410–16–P**DEPARTMENT OF AGRICULTURE****Rural Housing Service****[Docket No.: RHS–24–MFH–0006]****Notice of Funds Availability (NOFA) for the Multifamily Housing Preservation and Revitalization Demonstration Program (MPR) and for Section 515 Subsequent Loans for Preservation Activities for the Fiscal Year (FY) 2024; Correction****AGENCY:** Rural Housing Service, United States Department of Agriculture (USDA).**ACTION:** Notice of Funding Announcement (NOFA); correction.**SUMMARY:** On September 27, 2024, Rural Development's Rural Housing Service (RHS or Agency), an Agency of the United States Department of Agriculture (USDA), published a notice of funds availability (NOFA). The NOFA announced that the Agency is inviting applications for the Multifamily Housing Preservation and Revitalization Demonstration Program (MPR) and section 515 Loan Program. The NOFA contains erroneous information about applicable dates. This document corrects the erroneous dates.**DATES:** This notice is applicable on October 23, 2024.**FOR FURTHER INFORMATION CONTACT:** Jonathan Bell, Director, Processing and Report Review Branches, Production and Preservation Division, MFH, RD, USDA, via email: MFHprocessing1@usda.gov or telephone: (202) 205–9217

for additional information on this Notice.

Persons with disabilities that require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language) may contact the Agency or staff office; or the 711 Relay Service.

SUPPLEMENTARY INFORMATION: The Agency is issuing a correction to the NOFA published in the **Federal Register** at 89 FR 79229. In FR Doc. 2024–22177, appearing on page 79229 in the **Federal Register** of September 27, 2024, make the following corrections:

1. On page 79231, in the second column, under paragraph “(a)”, in the third line, the date is corrected to read, “January 1, 2028.”

2. On page 79238, in the third column, in item “(4),” on the second and third lines, the date is corrected to read, “January 1, 2028,” and on the fifth and sixth lines, the date is corrected to read, “January 1, 2028.”

3. On page 79239, in the first column, under item number “(5),” on the second line, the date is corrected to read, “January 1, 2028;” on the fifth line, the date is corrected to read “January 1, 2028;” on the tenth, the date is corrected to read “January 1, 2028”.

Yvonne Hsu,*Acting Administrator, Rural Housing Service.*

[FR Doc. 2024–24506 Filed 10–22–24; 8:45 am]

BILLING CODE 3410–XV–P**COMMISSION ON CIVIL RIGHTS****Notice of Public Meeting of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights****AGENCY:** Commission on Civil Rights.**ACTION:** Notice of virtual business meetings.**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 District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold three public meetings via Zoom. The purpose of these meetings is to draft a report on the accessibility and provision of special education for students with disabilities in DC public schools.**DATES:**

- Thursday, November 21, 2024, from 1:00 p.m.–2:00 p.m. Eastern Time
- Thursday, December 5, 2024, from 12:00 p.m.–1:00 p.m. Eastern Time
- Wednesday, January 8, 2025, from 12:00 p.m.–1:00 p.m. Eastern Time

ADDRESSES: These meetings will be held via Zoom.

November 21st Meeting

- **Registration Link (Audio/Visual):** <https://bit.ly/4f64dvW>
- **Join by Phone (Audio Only):** 1-833-435-1820 USA Toll Free; Webinar ID: 161 613 0119#

December 5th Meeting

- **Registration Link (Audio/Visual):** <https://bit.ly/3XZpmks>
- **Join by Phone (Audio Only):** 1-833-435-1820 USA Toll Free; Webinar ID: 161 725 8324#

January 8th Meeting

- **Registration Link (Audio/Visual):** <https://bit.ly/3NucP3T>
- **Join by Phone (Audio Only):** 1-833-435-1820 USA Toll Free; Webinar ID: 160 935 2620#

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, DFO, at mtrachtenberg@usccr.gov or 1-202-809-9618.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration links above. Any interested members of the public may attend these meetings. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of each meeting will include a list of persons who are present. 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 is available by selecting "CC" in the meeting platform. To request additional accommodations, please email svillanueva@usccr.gov at least 10 business days prior to the scheduled 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 scheduled meeting. Written comments may be emailed to Sarah Villanueva at svillanueva@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-809-9618.

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 the file sharing website, <https://bit.ly/3NsMpj6>. 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 svillanueva@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Discussion and Votes: Report on the accessibility and provision of special education for students with disabilities in DC public schools
- III. Public Comment
- IV. Adjournment

Dated: October 18, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-24536 Filed 10-22-24; 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; National Survey of Children's Health

AGENCY: U.S. Census Bureau, 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 National Survey of Children's Health, 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 23, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to ADDP.NSCH.List@census.gov. Please reference National Survey of Children's Health in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2024-0025, to the Federal e-

Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://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 Christine Flanagan Borman, Survey Director, by way of phone (301-763-4315) or email (christine.flanagan.borman@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored primarily by the U.S. Department of Health and Human Services' Health Resources Services Administration's Maternal and Child Health Bureau (HRSA MCHB), the National Survey of Children's Health (NSCH) is designed to produce data on the physical and emotional health of children under 18 years of age who live in the United States. The National Center on Birth Defects and Developmental Disabilities (CDC-NCBDDD) and the Division of Nutrition, Physical Activity, and Obesity (CDC-DNPAO) within the United States Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) along with the United States Department of Agriculture (USDA) sponsor supplemental content on the NSCH. Additionally, the upcoming cycle of the NSCH plans to include twelve (12) state oversamples. These state oversamples would be sponsored by the State of Arizona, the State of California, the State of Colorado, the State of Illinois, the State of Kansas, the State of Nebraska, the State of New Mexico, the State of Ohio, the State of Pennsylvania, the State of Utah, the State of West Virginia, and the State of Wyoming.

The NSCH collects information on factors related to the well-being of children, including access to health care, in-home medical care, family interactions, parental health, school and after-school experiences, and neighborhood characteristics. The goal

of the 2025 NSCH is to provide HRSA MCHB, the supplemental sponsoring agencies, states, and other data users with the necessary data to support the production of national estimates yearly and state- or region-based estimates with pooled samples on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs. The MCHB sponsored NSCH sample plus the separately sponsored state-based oversamples will be approximately 375,000 addresses for the 2025 NSCH.

NSCH is seeking clearance to make the following changes:

- *Revised questionnaire content*—Newly proposed and revised NSCH content from the sponsors at HRSA MCHB is currently undergoing cognitive testing. This testing request was submitted under the generic clearance package and approved by OMB¹. Based on the results, a list of modified content will be included in the full OMB ICR for the 2025 NSCH.

- *Oversamples*²—In order to inform various priorities that are otherwise not supported by the NSCH, some stakeholders have shown interest in sponsoring an oversample of particular populations as part of the annual NSCH administration. Currently, there are twelve (12) states contributing to an oversample as part of the 2025 NSCH. Ten (10) states (California, Colorado, Illinois, Kansas, Nebraska, New Mexico, Ohio, Pennsylvania, Utah, and Wyoming) have been oversampled in one or more previous cycle(s) of the NSCH since 2020 and are continuing with the option as part of the 2025 NSCH. Two (2) additional states (Arizona and West Virginia) will be oversampled for the first time in 2025.

Besides the proposed changes listed above, the 2025 NSCH will proceed with the current design outlined in the previous OMB ICR package, including the use of incentives. Response rates for the unconditional monetary incentive group continues to show a statistically significant difference over the control group that did not receive an unconditional monetary incentive. As part of the initial screener mailing, 90% will include \$5 and 10% will not receive an incentive. The incentive

assignment to each sampled address would still be random as was done in prior cycles and approved by OMB. For those households that are eligible for an initial paper topical mailing, the package will include an additional \$5 incentive. Additional incentives and mailing strategies may be used to both reduce nonresponse bias and improve response rates per request of the sponsor and as funding allows. We will continue to make modifications to data collection strategies based on modeled information about paper or internet response preference. Results from prior survey cycles will continue to be used to inform the decisions made regarding future cycles of the NSCH.

From prior cycles of the NSCH, using American Association for Public Opinion Research definitions of response, we can expect for the 2025 NSCH an overall screener completion rate to be about 41.9% and an overall topical completion rate to be about 27.1%.³ This is different from the overall response rate, which we expect to be about 35.8%.⁴

II. Method of Collection

The 2025 NSCH plan for the web push data collection design includes approximately 70% of the production addresses receiving an initial invite with instructions on how to complete an English or Spanish-language screener questionnaire via the web. Households that decide to complete the web-based survey will be taken through the screener questionnaire to determine if they are eligible for one of three topical instruments. Households that list at least one child who is 0 to 17 years old in the screener are directed into a topical questionnaire immediately after the last screener question. If a household in the web push treatment group decides to complete the paper screener, the household will receive an additional topical questionnaire incentive. This group will receive two

³ Screener Completion Rate is the proportion of screener-eligible households (*i.e.*, occupied residences) that completed a screener. It is equal to $(S+X)/(S+X+R+e(UR+UO))$, where S is the count of completed screeners with children, X is completed screeners without children, R is screener refusals, and $e(UR+UO)$ is the estimated count of screener eligible households among nonresponding addresses.

The Topical Completion Rate is the proportion of topical-eligible households (*i.e.*, occupied residences with children present) that completed a topical questionnaire. It is equal to I/HCT , where I is the count of completed topicals and HCT is the estimated count of households with children in the sample or $S+R+(S+R)/(S+X+R)*e(UR+UO)$.

⁴ Overall Response Rate is the probability a resolved address completes a screener questionnaire and then, when eligible, completes a topical questionnaire.

web survey invitation letters requesting their participation in the survey prior to receiving up to two additional paper screener questionnaires in the second and third follow-up mailings.

The 2025 NSCH plan for the mixed-mode data collection design includes up to 30% of the production addresses receiving a paper screener questionnaire in the initial mailing with instructions on how to complete an English or Spanish language screener questionnaire via the web as well. Households that decide to complete the web-based survey will follow the same screener and topical selection path as the web push. Households that choose to complete the paper screener questionnaire rather than completing the survey on the internet and that have eligible children will be mailed a paper topical questionnaire upon receipt of their completed paper screener at the Census Bureau's National Processing Center. If a household in the mixed-mode group chooses to complete the paper screener instead of completing the web-based screener via the internet, then the household will receive an additional topical questionnaire incentive. This group will receive both a web survey invitation letter along with a mailed paper screener questionnaire with either the initial invitation or the first follow-up and each additional nonresponse follow-up mailing.

III. Data

OMB Control Number: 0607–0990.

Form Number(s): NSCH–S1 (English Screener), NSCH–T1 (English Topical for 0- to 5-year-old children), NSCH–T2 (English Topical for 6- to 11-year-old children), NSCH–T3 (English Topical for 12- to 17-year-old children), NSCH–S–S1 (Spanish Screener), NSCH–S–T1 (Spanish Topical for 0- to 5-year-old children), NSCH–S–T2 (Spanish Topical for 6- to 11-year-old children), and NSCH–S–T3 (Spanish Topical for 12- to 17-year-old children).

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Parents, researchers, policymakers, and family advocates.

Estimated Number of Respondents: 126,703.

Estimated Time per Response: 5 minutes per screener response and 35–36 minutes per topical response, which in total is approximately 40–41 minutes for households with eligible children.

Estimated Total Annual Burden Hours: 42,863.

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

¹ Generic Clearance Information Collection Request: https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202209-0607-002&icID=269125.

² State Oversampling in the National Survey of Children's Health: Feasibility, Cost, and Alternative Approaches https://census.gov/content/dam/census/programs-surveys/nsch/NSCH_State_Oversample_Summary_Document.pdf.

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: Voluntary.

Legal Authority: Title 13 U.S.C. 8(b); 42 U.S.C. 701; 42 U.S.C. 1769d(a)(4)(B); and 42 U.S.C. 241.

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,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024-24530 Filed 10-22-24; 8:45 am]

BILLING CODE 3510-07-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 Methods Panel Tests

AGENCY: Census Bureau, 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 Methods Panel Tests, 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 23, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email acso.pra@census.gov. Please reference American Community Survey Methods Panel Tests in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2024-0027, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments. 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 G. Brian Wilson, U.S. Census Bureau, American Community Survey Office, 301-763-2819, George.Brian.Wilson@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Community Survey (ACS) is an ongoing monthly survey that collects detailed social, economic, housing and demographic data from about 3.5 million addresses in the United States and about 36,000 addresses in Puerto Rico each year (where it is called the Puerto Rico Community Survey). The ACS also

collects detailed data from about 150,000 residents living in group quarters (GQ) facilities in the United States and Puerto Rico. Resulting tabulations from this data collection are provided on a yearly basis. The ACS allows the Census Bureau to provide timely and relevant social, economic, housing, and demographic statistics, even for low levels of geography.

An ongoing data collection effort with an annual sample of this magnitude requires that the Census Bureau continue research, tests, and evaluations aimed at improving data quality, reducing data collection costs, and improving the ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program at the Census Bureau designed to address and respond to survey issues and needs of the ACS. As part of the Decennial Census Program, the ACS also provides an opportunity to research and test elements of survey data collection that relate to the decennial census. As such, the ACS Methods Panel can serve as a testbed for the decennial census. From 2025 to 2028, the ACS Methods Panel may test ACS and decennial census methods for reducing survey cost, addressing respondent burden, and improving survey response, data quality, and survey efficiencies for housing units and group quarters. The ACS Methods Panel may also address other emerging needs of the program.

At this time, proposals are in place for several tests related to self-response. Tests may also be conducted for nonresponse follow-up data collection and other ACS operations. Because the ACS Methods Panel is designed to address emerging issues, we may propose additional testing as needed. Any testing would focus on methods for reducing data collection costs, improving data quality, improving the respondent experience, revising content, or testing new questions for the Decennial Census Program. The proposed tests are outlined below.

Questionnaire Timing Test: In an effort to boost self-response rates and decrease survey costs, the Questionnaire Timing Test will test whether changing the timing of when the ACS paper questionnaire is sent to sampled addresses can increase self-response (overall and by data collection mode) and/or reduce data collection costs. The test will also evaluate the impact of including a Quick Response (QR) code directing respondents to the internet data collection instrument. If successful, adopting these changes could decrease data collection costs associated with the paper questionnaire and the Computer-

Assisted Personal Interviewing (CAPI) nonresponse follow-up operation.

Internet Instrument Response Option and Error Message Design Test: This test will provide information to aid the development of web design standards for household and group quarters data collection instruments used throughout the Census Bureau. This test will focus on design standards related to response options and error messages to increase data quality and the response experience. The test for the response options will compare the use of standard radio buttons (the current design) to the use of response buttons, which have a border around the radio button and response option wording. The response buttons will highlight when hovered over and change to green once selected. This test will determine if these changes decrease response time, change response distributions, or affect item nonresponse. An additional change is a modification to error message design to explore how respondents react to a different display. Current error messages display at the top of the page within a box and use an exclamation mark and color to draw attention. For missing write-in fields, an arrow shows where the error occurred. This experiment will test a change in colors used to draw attention to the error. Instead of an arrow showing where there is a missing write-in, a change in the write-in border will be used.

Additional Internet Instrument Testing: In 2013, the ACS incorporated the use of an internet instrument to collect survey responses. The design of the instrument reflected the research and standards of survey data collection at that time. With a growing population using the internet to respond to the ACS, as well as the increased use of smartphones and other electronic devices with smaller screens, an evaluation of the internet instrument is needed. Design elements will be developed and tested based on input from experts in survey methodology and web survey design. Testing may include revisions focused on improving login procedures and screen navigation, improving the user interface design, as well as methods to decrease respondent burden. Multiple tests may be conducted.

Self-Response Mail Messaging and Contact Strategies Testing: In response to declining ACS response rates and increasing data collection costs, the Census Bureau plans to study methods to increase self-response to the survey, as this mode of data collection is the least expensive. The Census Bureau currently sends up to five mailings to a sampled address to inform the

occupants that their address has been selected to participate in the ACS and to encourage them to self-respond to the survey. The proposed tests would evaluate changes to the mailings, including the use of additional plain language to improve communication, redesigning the visual appearance of the mail materials, improving messaging to motivate response, and adding or removing materials included in the mailings. Changes to the contact method, the number of contacts, and the timing of the contacts may also be tested. Multiple tests may be conducted.

Content Testing: Working through the Office of Management and Budget Interagency Committee for the ACS, the Census Bureau will solicit proposals from other Federal agencies to change existing questions or add new questions to the ACS. The objective of content testing is to determine the impact of changing question wording and response categories, as well as redefining underlying constructs, on the quality of the data collected. The Census Bureau evaluates changes to current questions by comparing the revised questions to the current ACS questions. For new questions, the Census Bureau proposes comparing the performance of two versions of any new questions and benchmark results with other well-known sources of such information. The questions would be tested using all modes of data collection. Response bias or variance may also be measured to evaluate the questions by conducting a follow-up interview with respondents. Multiple tests may be conducted.

Nonresponse Follow-up Data Collection Testing: The Census Bureau is proposing to test modifications to nonresponse follow-up data collection operations to increase response to the survey. The proposed tests would evaluate changes to the materials used by ACS field representatives (FRs), including changes to the messaging to motivate response or changes to the types of materials used. Testing may also include evaluation of modifications to operational approaches and data collection procedures, such as contact methods and timing. Multiple tests may be conducted.

II. Method of Collection

The American Community Survey is collected via the following modes: internet, paper questionnaire, telephone interview, and in-person interview (CAPI). The Census Bureau sends up to five mailings to eligible housing units to encourage self-response. Respondents may receive help by utilizing an Interactive Voice Response (IVR) system (though survey response cannot be

provided by IVR). Respondents can also call our Telephone Questionnaire Assistance (TQA) help line for help or to respond. FRs may visit a housing unit or sampled GQ facility to conduct an interview in person or may conduct the interview by phone. Administrative records are also used to replace, supplement, and support data collection. The ACS Methods Panel Tests use all of these modes of data collection or a subset of the modes, depending on the purpose of the test. Specific modes for the tests are noted below.

Questionnaire Timing Test: This test will evaluate mailout materials, number of mailings, and the timing of mailouts that solicit self-response using paper questionnaire responses. The test will include housing units only.

Internet Instrument Response Option and Error Message Design Test: This test will assess modifications to the internet instrument conducted via a split-sample experiment. Only the internet mode of the self-response phase of data collection is included in the testing.

Additional internet Instrument Testing: This testing will assess modifications to the internet instrument conducted via split-sample experiments. Only the internet mode of the self-response phase of data collection is included in the testing.

Self-Response Mail Messaging and Contact Strategies Testing: This testing will evaluate mailout materials that solicit self-response using internet, paper questionnaire, and telephone responses. Tests will be done as a split sample and will include housing units only.

Content Testing: This testing is for item-level changes and will be conducted as a split-sample experiment, with half of the sampled addresses receiving one version of the questions and the other half receiving a different version of the questions. All modes of ACS data collection are included in the test. Additionally, a follow-up reinterview may be conducted with all households that respond to measure response bias or response variance.

Nonresponse Follow-up Data Collection Testing: This testing will be done as a split sample focusing on in-person and telephone interviews conducted by FRs. As part of their interaction with respondents, FRs also encourage response online and provide materials to respondents. Respondents may also mail back a paper questionnaire they received during the self-response phase of the ACS.

III. Data

OMB Control Number: 0607–0936.

Form Number(s): ACS-1, ACS-1(GQ), ACS-1(PR)SP, ACS CAPI(HU), and ACS RI(HU).

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents:

Test	Estimated number of respondents
Questionnaire Timing Test	288,000.
Response Option and Error Message Design Test	288000.
Additional Internet Instrument Testing	Test A—60,000, Test B—60,000.
Self-Response Mail Messaging and Contact Strategies Testing	Test A—60,000, Test B—60,000, Test C—60,000.
Content Testing	Test A—40,000, Test B—40,000.
Content Testing Follow-up Interview	Test A—40,000, Test B—40,000.
Nonresponse Follow-up Data Collection Testing	100,000.

Estimated Time per Response:

Test	Estimated time per response
Questionnaire Timing Test	40
Response Option and Error Message Design Test	40
Additional Internet Instrument Testing	40
Self-Response Mail Messaging and Contact Strategies Testing	40
Content Testing	40
Content Testing Follow-up Interview	20
Nonresponse Follow-up Data Collection Testing	40

Estimated Total Annual Burden Hours:

Test	Estimated number of respondents	Estimated time per response (in minutes)	Total burden hours
Questionnaire Timing Test	288,000	40	192,000
Response Option and Error Message Design Test	288000	40	192,000
Additional Internet Instrument Testing	Test A—60,000 Test B—60,000	40	40,000 40,000
Self-Response Mail Messaging and Contact Strategies Testing	Test A—60,000 Test B—60,000 Test C—60,000	40	40,000 40,000 40,000
Content Testing	Test A—40,000 Test B—40,000	40	26,667 26,667
Content Testing Follow-up Interview	Test A—40,000 Test B—40,000	20	13,333 13,333
Nonresponse Follow-up Data Collection Testing	100,000	40	66,667
Total (over 3 years) *	1,136,000		730,667
Annual Burden Hours	378,667		243,556

* **Note:** This is the maximum burden requested for these tests. Every effort is taken to use existing production sample for testing when the tests do not involve content changes.

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, 193, and 221.

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,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–24529 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–889]

Certain Quartz Surface Products From India: Notice of Amended Final Results of Antidumping Duty Administrative Review Pursuant to Settlement

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is issuing these amended final results pursuant to a settlement agreement with Antique Marbonite Private Limited, Arizona Tile, LLC, Cambria Company LLC, M S International, Inc., PNS Clearance LLC, Prism Johnson Limited, Shivam Enterprises, and other various entities with respect to the final results of the administrative review of certain quartz surface products (QSP) from India during the period of review (POR) December 13, 2019, through May 31, 2021.

DATES: Applicable October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0012.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2023, Commerce published the final results of the administrative review of the antidumping duty order on QSP from India.¹ The POR is December 13, 2019, through May 31, 2021.

The administrative review covers Antique Marbonite Private Limited, India/Shivam Enterprises/Prism Johnson Limited (collectively, Antique Group), Pokarna Engineered Stone Limited, Baba Super Minerals Pvt. Ltd., Camrola Quartz Limited, Chariot

International Pvt. Ltd., Cuarzo, Esprit Stones Pvt., Ltd., Glowstone Industries Private Limited, Keros Stone LLP, Mahi Granites Private Limited., Marudhar Rocks International Pvt. Ltd., Pacific Industries Limited, Pacific Quartz Surfaces LLP, Paradigm Stone India Private Limited, Pelican Quartz Stone, Quartzkraft LLP, Rocks Forever, Safayar Ceramics Private Ltd., Satya Exports, Southern Rocks and Minerals Private Limited, and Sunex Stones Private Ltd., producers and/or exporters of QSP from India to the United States. In the *Final Results*, Commerce assigned to Antique Group a weighted-average dumping margin of 323.12 percent for the POR and assigned to the non-selected respondents² a weighted-average dumping margin of 3.19 percent for the POR.³

Following the publication of the *Final Results*, Antique Group, Arizona Tile *et al.*,⁴ APB Trading, LLC *et al.*,⁵ and Cambria Company LLC (Cambria) filed lawsuits with the U.S. Court of International Trade (CIT) challenging certain aspects of Commerce's *Final Results*, including Commerce's decisions to reject Antique Group's second supplemental questionnaire response, deny Antique Group's requests for permission to refile the response, apply total adverse facts available to Antique Group, and assign the all-others rate calculated in the underlying investigation to the non-selected respondents in the administrative review.⁶

On October 16, 2024, the United States, Antique Group, Arizona Tile *et al.*, APB Trading, LLC *et al.*, Cambria, and Federation of Indian Quartz Surface Industry entered into an agreement to settle this dispute. Pursuant to the terms of settlement and the stipulation for entry of judgment, the amended final weighted-average dumping margin for Antique Group is 3.58 percent.

² Including, but not limited to: ARO Granite Industries Limited, Baba Super Minerals Pvt. Ltd., Camrola Quartz Limited, Chariot International Pvt. Ltd., Cuarzo, Esprit Stones Pvt., Ltd., Glowstone Industries Private Limited, Keros Stone LLP, Mahi Granites Private Limited., Marudhar Rocks International Pvt. Ltd., Pacific Industries Limited, Pacific Quartz Surfaces LLP, Paradigm Stone India Private Limited, Pelican Quartz Stone, Quartzkraft LLP, Rocks Forever, Safayar Ceramics Private Ltd., Satya Exports, Southern Rocks and Minerals Private Limited, and Sunex Stones Private Ltd.

³ See *Final Results*, 88 FR at 1189.

⁴ Arizona Tile, LLC, M S International, Inc., and PNS Clearance LLC (collectively, Arizona Tile).

⁵ APB Trading, LLC, Cosmos Granite (South East) LLC, Cosmos Granite (South West) LLC, Curava Corporation; DivyaShakti Limited, Divyashakti Granites Limited, Marudhar Rocks International Pvt. Ltd., Overseas Manufacturing and Supply Inc., Quartzkraft LLP, and Stratus Surfaces LLC.

⁶ See *Cambria Company LLC v. United States*, Slip Op. 24–62 (CIT May 28, 2024).

Additionally, Commerce will set importer-specific dumping margins for the remaining unliquidated entries of certain non-selected companies at 1.02 percent.⁷ The CIT issued its order of judgment by stipulation on October 16, 2024.⁸

Assessment Rates

Consistent with the settlement agreement and October 16, 2024, order of judgment by stipulation, Commerce will instruct U.S. Customs and Border Protection (CBP) to liquidate all unliquidated entries of QSP from India produced and/or exported by Antique Group, and entered, or withdrawn from warehouse, for consumption in the United States during the POR equal to Antique Group's weighted-average dumping margin of 3.58 percent. Additionally, Commerce will instruct CBP to assess importer-specific dumping margins for certain non-selected companies at 1.02 percent as follows: (i) for subject merchandise imported by Arizona Tile, LLC and produced and/or exported by ARO Granite Industries Limited, Esprit Stones Pvt., Ltd., Marudhar Rocks International Pvt. Ltd., Pacific Industries Limited, Pacific Quartz Surfaces LLP, Paradigm Stone India Private Limited, Pelican Quartz Stone, Rocks Forever, Safayar Ceramics Private Ltd., Satya Exports, or Southern Rocks and Minerals Private Limited; and (iii) for subject merchandise imported by PNS Clearance LLC and produced and/or exported by Baba Super Minerals Pvt. Ltd., Camrola Quartz Limited, Chariot International Pvt. Ltd., Cuarzo, Esprit Stones Pvt., Ltd., Glowstone Industries Private Limited, Keros Stone LLP, Mahi Granites Private Limited., Pacific Industries Limited, Pacific Quartz Surfaces LLP, Paradigm Stone India Private Limited, Pelican Quartz Stone, Rocks Forever, Safayar Ceramics Private Ltd., Satya Exports, Southern Rocks and Minerals Private Limited, or Sunex Stones Private Ltd.

⁷ See "Assessment Rates" section, *infra*.

⁸ See *Cambria Company LLC v. United States*, Consol. Court No. 23–00007, Doc. No. 115 (Oct. 16, 2024).

¹ See *Certain Quartz Surface Products from India: Final Results of Antidumping Duty Administrative Review*; 2019–2021, 88 FR 1188 (January 9, 2023) (*Final Results*).

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these revised final results of review.⁹

Notification to Interested Parties

We are issuing this determination and publishing these amended final results and notice in accordance with section 516a(e) of the Act.

Dated: October 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-24578 Filed 10-22-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-847]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Preliminary Results and Rescission in Part, of the Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines heavy walled rectangular welded carbon steel pipes and tubes (HWR) from Mexico were sold at less than normal value during the period of review (POR), September 1, 2022, through August 31, 2023. Additionally, Commerce is rescinding this review, in part, with respect to certain companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Taylor Hatley or Christopher Hargett, 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) 482-4886 or (202) 482-4161, respectively.

SUPPLEMENTARY INFORMATION:

⁹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Background

On September 13, 2016, Commerce published in the **Federal Register** the antidumping duty order on HWR from Mexico.¹ On September 6, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On November 15, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* with respect to 19 companies.³ On December 9, 2022, Commerce selected Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa) for individual examination as mandatory respondents in this administrative review.⁴

On May 16, 2024, Commerce extended the preliminary results of this review until August 30, 2024.⁵ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁶ Subsequently on August 15, 2024, Commerce extended the deadline for the preliminary results until October 4, 2024.⁷ For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁸

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865, (September 13, 2016) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 60923 (September 6, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 78298 (November 15, 2023) (*Initiation Notice*).

⁴ See Memorandum, “Respondent Selection for the 2022–2023 Antidumping Duty Administrative Review,” dated January 11, 2024.

⁵ See Memorandum, “Extension of Deadline for the Final Results of Antidumping Duty Administrative Review,” dated May 16, 2024.

⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁷ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated August 15, 2024.

⁸ See Memorandum, “Decision Memorandum for the Preliminary Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy,” (Preliminary Decision Memorandum) dated concurrently with, and hereby adopted by, this notice.

the date of publication of the notice of initiation of the requested review. On February 13, 2024, Nucor Tubular Products, Inc. (the petitioner) timely withdrew its request for an administrative review with respect to 17 companies.⁹ Because no other parties requested a review of these companies, we are rescinding this review, in part, with respect to these 17 companies.¹⁰

Scope of the Order

The products covered by the *Order* are HWR pipes and tubes from Mexico. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period September 1, 2021, through August 31, 2022:¹¹

⁹ See Petitioner’s Letter, “Partial Withdrawal of Request for Administrative Review,” dated February 13, 2024.

¹⁰ Companies for which the review request was withdrawn are: (1) Aceros del Toro S.A. de C.V.; (2) Aceros El Fraile S.A. de C.V.; (3) Arco Metal S.A. de C.V.; (4) Border Assembly S. de R.L. de C.V.; (5) Buffalo Tube S.A. de C.V.; (6) Fortacero S.A. de C.V.; (7) Forza Steel S.A. de C.V.; (8) Grupo Collado S.A. de C.V.; (9) Industrias Monterrey S.A. de C.V.; (10) Perfiles y Herrajes L.M. S.A. de C.V.; (11) P.J. Trailers Company S.A. de C.V.; (12) Placa y Fierro de Monterrey S.A. de C.V.; (13) PYTCO S.A. de C.V.; (14) Regiomontana de Perfiles y Tubos S.A. de C.V.; (15) Ternium S.A. de C.V.; (16) Tuberia Nacional S.A. de C.V.; and (17) Tuberias Procarsa S.A. de C.V.

¹¹ As discussed in the Preliminary Decision Memorandum, Commerce preliminarily collapsed

Exporter or producer	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V.; Técnicas de Fluidos S.A. de C.V.	7.22
Productos Laminados de Monterrey S.A. de C.V.	8.13

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs or other written comments to Commerce no later than 30 days after the date of publication of this notice.¹² Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.¹³ Parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings, we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide, at the beginning of their briefs, a public executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, no including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant

the following companies and treated them as a single entity: Maquilacero S.A. de C.V.; Técnicas de Fluidos S.A. de C.V.

¹² See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹³ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (APO and Service Final Rule).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Acting Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined and will notify the parties through ACCESS.¹⁷ Parties should confirm the date, time, and location of the hearing two days before the scheduled date. All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS¹⁷ by 5:00 p.m. Eastern Time on the established deadline.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, upon completion of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.¹⁸

Pursuant to 19 CFR 351.212(b)(1), if a respondent's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific *ad valorem* assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales.¹⁹ If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an importer-specific, per-unit assessment

rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If either of the respondents' weighted average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, in the final results of review, we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties.²⁰

For entries of subject merchandise during the POR produced by each individually examined respondent for which the producer did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate (4.91 percent) if there is no rate for the intermediate company(ies) involved in the transaction.²¹

For the companies for which this review is being rescinded, in part, Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit rate for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). With respect to the rescission of this review, in part, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this notice in the **Federal Register**.

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.²²

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the

²⁰ *Id.*, 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

²¹ See *Order*; see also *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²² See section 751(a)(2)(C) of the Act.

¹⁶ See APO and Service Final Rule.

¹⁷ See 19 CFR 351.310(d).

¹⁸ See 19 CFR 351.212(b).

¹⁹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.91 percent, the all-others rate established in the LTFV investigation.²³ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by interested parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.²⁴

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Affiliation and Single Entity Treatment
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2024–24497 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–831]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination; Withdrawal

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Preston Cox or Scarlet Jaldin, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–4257, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2024, the U.S. Department of Commerce (Commerce) erroneously published a duplicate **Federal Register** notice titled *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*. Commerce is withdrawing the above-mentioned notice, **Federal Register** Doc. 2024–23678.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(f) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.205(c).

Dated: October 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–24498 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–106, C–570–107]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Scope Determination, Certification Requirements, and Rescission of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of July 17, 2024, in which Commerce implemented a certification regime. This notice incorrectly stated that post-summary corrections must be filed to upload certifications for applicable unliquidated entries of wooden cabinets and vanities and components thereof (wooden cabinets) from China.

FOR FURTHER INFORMATION CONTACT: Michael Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2020, Commerce published the antidumping and countervailing duty orders on wooden cabinets from China.¹ On July 17, 2024, Commerce published in the **Federal Register** the final scope determination in which Commerce implemented a certification regime.² This notice

¹ See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 85 FR 22126 (April 21, 2020); and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 FR 22134 (April 21, 2020) (collectively, *Orders*).

² See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Scope Determination, Certification Requirements, and Rescission of Circumvention Inquiries on the Antidumping and countervailing*

²³ See *Order*.

²⁴ See section 751(a)(3)(A) of the Act; see also 19 CFR 351.213(h).

incorrectly stated that post-summary corrections must be filed to upload certifications for applicable unliquidated entries that were subject to the scope inquiry concerning wooden cabinets from China. However, post-summary corrections are not needed for certain such entries.

Correction

In the **Federal Register** of July 17, 2024, in FR Doc 2024–15681, on page 58112, in the third column, correct the text in the first full paragraph by striking the last sentence in the first full paragraph and adding the following sentence to the end of the paragraph: “Importers of this merchandise, that was declared as non-AD/CVD type (e.g., type 01) and is not subject to the *Orders* must upload certifications into the DIS in ACE for applicable unliquidated entries and applicable entries for which liquidation has not become final.” The corrected paragraph is attached to this notice in the appendix.

Notification to Interested Parties

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, 19 CFR 351.225(h), and 19 CFR 351.228.

Dated: October 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Certification Requirements for Malaysia and Vietnam

For all wooden cabinets entered, or withdrawn from warehouse, for consumption during the period November 4, 2021 (the effective date of the regulations pursuant to 19 CFR 351.225(l)(2)), through the date of the publication of this **Federal Register** notice, where an entry has not been liquidated (and for entries for which liquidation has not become final), the relevant certifications should be completed and signed as soon as practicable, but not later than 90 days after the date of publication of this notice in the **Federal Register**. It is not necessary to file certifications in the DIS for entries from this period that have already been liquidated. For entries from this period, importers, and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. The exporter must provide the importer with a copy of the

exporter certification with sufficient time for the importer to meet the 90-day deadline. Importers of this merchandise, that was declared as non-AD/CVD type (e.g., type 01) and is not subject to the *Orders* must upload certifications into the DIS in ACE for applicable unliquidated entries and applicable entries for which liquidation has not become final.

[FR Doc. 2024–24551 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–924]

Melamine From India: Postponement of Final Determination of Sales at Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of melamine from India until February 6, 2025, and is extending the provisional measures from a four-month period to a period of not more than six months.

DATES: Applicable October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2024, Commerce initiated an LTFV investigation of imports of melamine from India.¹ The period of investigation is January 1, 2023, through December 31, 2023. On September 24, 2024, Commerce published its preliminary determination in this LTFV investigation of melamine from India.²

Postponement of Final Determination

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until

not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by the exporters or producers who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period of not more than six months, in accordance with section 733(d) of the Act.

On October 8, 2024, Gujarat State Fertilizers and Chemicals Limited (GSFC), the respondent in this investigation, requested that Commerce postpone the deadline for the final determination, and extend the application of the provisional measures from a four-month period to a period of not more than six months.³ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination was affirmative; (2) the request was made by the exporters and producers who account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination until no later than 135 days after the date of the publication of the *Preliminary Determination*, and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determination no later than February 6, 2025.

This notice is issued and published pursuant to 19 CFR 351.210(g).

Dated: October 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–24499 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–DS–P

¹ *Duty Orders*, 89 FR 58110 (July 17, 2024), as corrected in *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Scope Determination, Certification Requirements, and Recission of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders; Correction*, 89 FR 63404 (August 5, 2024).

¹ See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 17413 (March 11, 2024).

² See *Melamine from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 89 FR 77832 (September 24, 2024) (*Preliminary Determination*).

³ See GSFC's Letter, “Request for Extension of Final Results,” dated October 8, 2024.

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****NIST Consortium for Advancement of Genome Editing**

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Research Consortium; Extension of Research Consortium.

SUMMARY: The National Institute of Standards and Technology (NIST) extends the duration of the NIST Consortium for Advancement of Genome Editing (Genome Editing Consortium or Consortium). The Consortium duration was previously through December 1, 2025. NIST is taking this action to provide additional time for interested parties to join the Consortium to further pursue the implementation and achievement of outcomes of the current Consortium activities, as well as to address additional standards needs as defined by the Consortium in qualification of off-target assays and quality of genome editing components. Beginning January 1, 2026 participation fees will increase to \$25,000 annually or in-kind contributions of equivalent value. Participants will be required to sign a Cooperative Research and Development Agreement (CRADA).

DATES: The Consortium's activities will continue as needed to complete the updated research plan. NIST will accept letters of interest to participate in this Consortium on an ongoing basis. Acceptance of participants into the Consortium will depend on the availability of resources.

ADDRESSES: Information in response to this notice, including completed letters of interest or requests for additional information about the Consortium, can be directed via mail to the Consortium Manager, Dr. Samantha Maragh, Biosystems and Biomaterials Division of NIST's Material Measurement Laboratory, 100 Bureau Drive, Mail Stop 8312, Gaithersburg, Maryland 20899 or via electronic mail to samantha@nist.gov, or by telephone at (301) 975-4947.

SUPPLEMENTARY INFORMATION: On January 11, 2018, NIST published a notice in the **Federal Register** (83 FR 1335), establishing the Consortium, and on February 2, 2021, NIST published a notice in the **Federal Register** (86 FR 7859) extending the duration of the Consortium until December 1, 2025. To provide additional time for interested parties to join the Consortium to further

pursue the implementation and achievement of the Consortium objectives, NIST extends the term to continue as needed to complete the updated research plan and will accept letters of interest on an ongoing basis. Previously submitted letters of interest do not need to be resubmitted.

The Consortium's current activities (as described in the original notice, 83 FR 1335) will continue, and the Consortium research plan is amended to include the following new activities:

Qualification of Off-Target Assays: Identify sources of variability and develop consensus approaches to qualifying off-target assays (including potential interlaboratory studies or control materials).

Quality of Genome Editing Components: Identify concepts/information, approaches/assays, and potential controls for assessing quality of genome editing components.

Alicia Chambers,
NIST Executive Secretariat.

[FR Doc. 2024-24514 Filed 10-22-24; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE356]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pile Driving Training Exercises at Naval Base Ventura County, Port Hueneme

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

ACTION: Notice; proposed issuance of an incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the United States Navy (Navy) for authorization to take marine mammals, by Level B harassment only, incidental to pile driving training exercises at Naval Base Ventura County, Port Hueneme (NBVC).

NMFS previously issued an incidental harassment authorization IHA to the Navy for similar activities on April 28, 2023 (hereinafter referred to as the initial IHA); however, during the initial authorization period, only one of four planned training exercise was performed. The Navy is requesting, and NMFS is proposing to issue an IHA authorizing incidental take for an

additional four training exercises. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible 1-year Renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision. The Navy's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: Comments and information must be received no later than November 7, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to ITP.tyson.moore@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of a Renewal IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have

the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On August 18, 2021, NMFS received a request from the Navy for an IHA to take marine mammals incidental to pile driving training exercises at NBVC. That application was deemed adequate and complete on January 12, 2023. NMFS published a notice of a proposed IHA and request for comments in the **Federal Register** on March 15, 2023 (88 FR 15956). We subsequently published the final notice of our issuance of the IHA on May 4, 2023 (88 FR 28517); the IHA was effective from May 1, 2023 through April 30, 2024. The specified activities were expected to result in the take of California sea lions (*Zalophus californius*) and harbor seals (*Phoca vitulina richardii*) by Level B harassment only. Neither the Navy nor NMFS expected serious injury or mortality to result from this activity and, therefore, an IHA was appropriate.

On February 22, 2024 NMFS received notification from the Navy that only one of four planned training exercises were completed under the initial IHA. On March 5, 2023 the Navy requested a renewal of the initial IHA; however, the Navy and NMFS deemed that it would be appropriate to issue a proposed IHA rather than undertake the renewal process given the Navy’s desire to request changes to the specified activity. On May 13, 2024, the Navy submitted an application requesting that a new IHA be issued that would allow take of California sea lions and harbor seals, by Level B harassment only, incidental to four pile driving training exercises at NBVC, effective for 1 year after the date of issuance. Revised applications were received on August 6, 2024, and September 12, 2024. The application was deemed adequate and complete on September 24, 2024. Proposed changes from the initial IHA include those associated with the Navy’s request, in some instances, to install and remove additional piles during the training exercises over additional days (*i.e.*, more than were addressed in the initial IHA) due to emergent training

requirements and tempo (see the Description of the Specified Activities and Anticipated Impacts section for more details). In addition, on May 3, 2024, NMFS published and solicited public comment on its draft Updated Technical Guidance (89 FR 36762), which includes updated hearing ranges and names for marine mammal hearing groups as well as updated thresholds and weighting functions to inform auditory injury estimates (*i.e.*, for Level A harassment). To ensure take by Level A harassment is appropriately considered, and in order to support consideration of the best available science, comparative calculations using both the existing NMFS Technical Guidance (NMFS, 2018) and the NMFS Updated Technical Guidance (NMFS, 2024) have been conducted and provided for consideration of take by Level A harassment. These proposed changes do not affect the previous analyses, mitigation, and monitoring requirements, or method of take calculations, outside of the inclusion of slightly larger Level A harassment zones and shutdown zones due to the increased numbers of piles anticipated to be installed and or removed within a day, and that the proposed training exercises would be completed in 136 days instead of 96 days. In evaluating the 2024 request and to the extent deemed appropriate, NMFS relies on the information presented in notices associated with the issuance of the initial IHA (88 FR 15956, March 15, 2023; 88 FR 28517, May 4, 2023).

The Navy submitted a monitoring report on March 4, 2023, based on the work completed under the initial IHA, which confirms that the applicant implemented the required mitigation and monitoring during the initial year of the activity, and that they did not exceed the authorized levels of take under the initial IHA. These monitoring results, as well as the Navy’s current request and application, are available to the public on our website: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-pile-driving-exercises-naval-base-ventura-county-port>.

Description of the Proposed Activities and Anticipated Impacts

Overview

The primary mission of NBVC is to provide a home port and to furnish training, administrative, and logistical support for the Naval Construction Battalions. As described in the initial IHA, Naval Construction Group ONE proposed to execute pile driving training exercises at NBVC that are

essential to construction battalion personnel prior to deployment. The specific components of each exercise could vary based on the specific training requirements for each battalion, but could include vibratory and impact pile driving, temporary pier construction, and subsequent removal of all installed materials. These are military readiness activities, as defined under the NDAA of Fiscal Year 2004 (Pub. L. 108–136).

Under the initial IHA, the Navy requested take by Level B harassment for California sea lions and harbor seals incidental to up to four pile driving training exercises, each of which could include installation and removal of a sheet pile wall and round pile pier. Level A harassment was not anticipated, requested, or authorized. It was estimated that each training exercise could take up to 24 days (12 days for pile installation and 12 days for pile removal), for a total of up to 96 days over the four training exercises. Due to issues with equipment, the Navy only performed one training activity for 11 days during the initial authorization period. The Navy is requesting a new IHA so that it can complete an additional four training exercises during the new IHA period. Due to emergent training requirements and tempo, the Navy is requesting, in some instances, to install and remove additional piles during the training exercises across a total of 136 days (34 active in-water pile driving per training exercise). The new IHA, if authorized, would be valid for 1 year from the date of issuance.

To support public review and comment on the IHA that NMFS is proposing to issue here, we refer to the documents related to the previously issued IHA and discuss any new or changed information here. The previous documents include the **Federal Register** notice of the proposed IHA (88 FR 15956, March 15, 2023), the **Federal Register** notice of issuance of the initial IHA (88 FR 28517, May 4, 2023), and all associated references and documents. We also refer the reader to the Navy's previous and current applications and monitoring reports which can be found at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-pile-training-exercises-naval-base-ventura-county-port>.

Dates and Duration

The initial IHA considered 96 total annual days of active in-water pile installation and removal, which would

be spread over four annual training exercises, each of which was estimated to last 24 days. The current request considers a total of 136 total annual days of active water in-water pile installation and removal spread over four annual training exercises (*i.e.*, each training exercise is estimated to last up to 34 days). Each workday would occur during daylight hours, and would last approximately 8 hours, but pile installation/removal would not occur for the entire eight hours. Due to the availability of resources, requirements by NBVC for port use, and battalion training needs, it is not possible to predict the precise dates of training activities; however, no more than four separate training events would occur over the duration of the proposed 1-year IHA.

Specific Geographic Region

A detailed description of the specific geographic region for the Navy's activities is found in the **Federal Register** notice of the proposed IHA for the initial IHA (88 FR 15956, March 15, 2023) and associated documents (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-pile-training-exercises-naval-base-ventura-county-port>). This description remains accurate and is referenced herein.

Detailed Description of the Activity

A detailed description of the training exercise for which take is proposed here may be found in the **Federal Register** notices of the proposed and final IHA for the initial authorization (88 FR 15956, March 15, 2023 and 88 FR 28517, May 4, 2023, respectively), and in associated documents (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-pile-training-exercises-naval-base-ventura-county-port>). The description, including of the activities, including the types of equipment planned for use, are identical to those described in the previous notices and remains accurate with the exception of anticipated production rates, which are described in more detail below.

The Navy has requested, in some instances, to increase the number of piles that may be driven in a day due to emergent training requirements and tempo. Differences between the initial and proposed IHAs are shown in table 1. Specifically, the initial IHA

considered that a total of 15 24-inch steel sheet piles, 10 16-inch timber piles, and 4 14-inch H-beam steel piles may be driven during each training exercise. The current request proposes that up to 30 24-inch steel sheet piles, 12 16-inch timber piles, and 6 14-inch H-beam steel piles may be driven during each training exercise. These changes represent a 65.5-percent increase in the total number of piles anticipated to be installed and removed each training exercise.

Anticipated production rates for installation and removal with a vibratory and or impact hammer, and how these rates compared to the initial IHA, are provided in table 1. To allow for unanticipated variation in production rates and to account for any training that is slowed or delayed due to the need to meet specific training or mitigation requirements (*e.g.*, additional delays or shutdowns due to larger shutdown zones; see the Proposed Mitigation section of this notice for more details), the Navy has added buffer days to the total anticipated activity days proposed for the training exercises. The buffers for vibratory pile installation and removal include 12 days for 24-inch steel sheets, 3 days for 16-in round timber piles, and 3 days for 14-in steel H-piles. The buffers for impact driving include 4 days for 16-in round timber piles and 3 days for 14-in steel H-piles. With these buffer days added, the Navy anticipates that pile driving could occur on up to 34 days each training exercise, for a total of 136 days spread across the four training exercises. Buffer days were not considered in the initial IHA. The initial IHA anticipated that it could take 5 days to install and 5 days to remove the 24-inch steel sheets, 5 days to install and 5 days to remove 16-in round timber piles, and 2 days to install and 2 days to remove the 14-in steel H-piles, for a total of 24 days per training exercise and 96 days during the 1-year IHA effective period (see table 1 in the **Federal Register** notices of the proposed and final IHA for the initial authorization; 88 FR 15956, March 15, 2023 and 88 FR 28517, May 4, 2023, respectively). Therefore, the current proposed training exercises could occur for up to 10 additional days each training exercise and up to 40 additional days during the proposed 1-year authorization period compared to the initial IHA.

TABLE 1—SUMMARY OF PILE DETAILS AND ESTIMATED PRODUCTION RATES FOR PILE INSTALLATION AND REMOVAL DURING EACH TRAINING EXERCISE FOR THE INITIAL AND PROPOSED IHAS

Pile size/type/shape	Authorization	Number of sheets/piles	Vibratory installation/ removal duration per pile	Potential impact strikes per pile, if needed	Production rate (piles/day)				Days of installation	Days of removal	Buffer days ¹	Total days per exercise
					Installation		Removal					
					Vibratory hammer	Impact hammer	Vibratory hammer	Impact hammer				
24-in Steel Sheet	Initial IHA	15	10/20 minutes	NA	3	3	NA	5	5	0	10	
	Proposed IHA	30	10/30 minutes	NA	30	NA	NA	1	1	12	14	
12-in Timber Pile	Initial IHA	10	20/30 minutes	1,800	2	2	NA	5	5	0	10	
	Proposed IHA	12	20/30 minutes	1,800	12	6	NA	2	1	7	10	
14-in H-Beam Pile	Initial IHA	4	20/30 minutes	1,800	2	2	NA	2	2	0	4	
	Proposed IHA	6	20/30 minutes	1,800	6	2	NA	3	1	6	10	
Totals for the Initial IHA			7.17 hours/12 hours				NA	12	12	0	24	
Totals for the Proposed IHA			11 hours/24 hours				NA	6	3	25	34	

¹ Buffer days are included in the proposed IHA to allow for unanticipated variation in production rates and to account for any training that is slowed or delayed due to the need to meet specific training or mitigation requirements; buffer days were not considered in the initial IHA.

The anticipated duration of vibratory removal of steel sheet piles has also changed from the initial IHA. The initial IHA estimated that this activity would take 20 minutes, whereas the Navy now estimates that this activity could take 30 minutes (table 1). This increase in duration, in addition to the increased number of piles to be installed and removed each training exercise, increases both the daily duration and the total duration of active pile driving anticipated to occur. The initial IHA considered that vibratory installation and removal of all piles could take 7.17 hours and 12 hours, respectively, during each training exercise; whereas the current request anticipates that vibratory installation and removal of all piles could take 11 hours and 24 hours, respectively, during each training exercise (table 1). These changes represent a 100-percent increase in the total estimated amount of time required each training exercise for vibratory installation and removal of piles. The number of strikes estimated to be required per pile during impact hammer installation is the same as that estimated in the initial IHA; however, given more piles are anticipated to be installed, it is also anticipated that the total amount of time for impact pile driving would also increase.

This change in the total number of piles and the increased daily durations of pile durations would result in slightly larger Level A harassment zones and shutdown zones due to increased durations of pile driving activities. In addition, the additional days of estimated activity would result in a higher amount of take by Level B harassment to be proposed to be authorized compared to the initial IHA. No other changes have been made to the planned activities. The details of these

requested changes are provided in table 1 and in the Estimated Take of Marine Mammals and Proposed Mitigation sections of this notice. The proposed IHA, if authorized, would be effective for 1 year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA (88 FR 15956, March 15, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, 2023 draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured

(behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018, 2024) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained.

On May 3, 2024, NMFS published and solicited public comment on its draft Updated Technical Guidance (89 FR 36762), which includes updated hearing ranges and names for the marine mammal hearing groups and is intended to replace the 2018 Technical Guidance once finalized. The public comment period ended on June 17th, 2024. Because NMFS may finalize the Guidance prior to taking a final agency action on this proposed IHA, we considered both the 2018 and 2024 Technical Guidance in our effects and estimated take analysis below. Marine mammal hearing groups and their associated hearing ranges from NMFS (2018) and NMFS (2024) are provided in tables 2 and 3. In the draft Updated Technical Guidance, mid-frequency cetaceans have been re-classified as high-frequency cetaceans, and high-frequency cetaceans have been updated to very-high-frequency (VHF) cetaceans. Additionally, the draft Updated Technical Guidance includes in-air data for phocid (PA) and otariid (OA) pinnipeds.

TABLE 2—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

TABLE 3—MARINE MAMMAL HEARING GROUPS
[NMFS, 2024]

Hearing group	Generalized hearing range *
Underwater:	
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.
In-Air:	
Phocid pinnipeds (PA) (true seals)	42 Hz to 52 kHz.
Otariid pinnipeds (OA) (sea lions and fur seals)	90 Hz to 40 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on ~65-dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall *et al.*, 2007; Southall *et al.*, 2019. Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which an authorization of incidental take is proposed here may be found in the **Federal Register** notice of the proposed IHA (88 FR 15956, March 15, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take of Marine Mammals

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (88 FR 15956, March 15, 2023 and 88 FR 28517, May 4, 2023, respectively). Specifically, the source levels and marine mammal occurrence data applicable to this authorization remain unchanged from the previously

issued IHA, as do the thresholds and methodology for estimating take by Level B harassment.

The Navy, however, anticipates that the number of piles that could be installed or removed per day would increase compared to the initial IHA so that personnel can meet new training requirements during the proposed IHA authorization period (see table 1). In addition, the Navy anticipates that the vibratory removal of 24-in steel sheets could take 30 minutes, whereas the initial IHA considered this activity could take 20 minutes. As described in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (88 FR 15956, March 15, 2023, and 88 FR 28517, May 4, 2023, respectively) for the initial authorization, the ensounded area associated with Level A harassment accounts for both source level of the specified activity and duration of that activity. Increasing the number of piles to be installed/removed per day, as well as the anticipated duration of vibratory removal of steel sheet piles, increases the total estimated daily duration of the activity, and thus, the extent of the Level A harassment zones. Note; the estimated distances to the Level B

harassment isopleths would not increase because activity duration is not considered in their calculation.

Further, to ensure we have considered an adequate estimate of take by Level A harassment and in order to support consideration of the best available science, we have conducted basic comparative calculations using both the existing Technical Guidance (NMFS, 2018) and the draft Updated Technical Guidance (NMFS, 2024) for the purposes of understanding the number of potential takes by Level A harassment. The thresholds used to assess Level A harassment from each Guidance are provided in tables 4 and 5, respectively. The references, analysis, and methodology used in the development of these thresholds are described in NMFS' 2018 Technical Guidance and NMFS' 2024 draft Updated Technical Guidance, respectively, both of which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

The Navy's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory driving) sources.

TABLE 4—NMFS' 2018 THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS onset acoustic thresholds ¹ (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

¹ Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for NMFS' 2018 Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

TABLE 5—NMFS' 2024 THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY (AUD INJ)

Hearing group	AUD INJ acoustic thresholds ¹ (received level)	
	Impulsive	Non-impulsive
Underwater:		
Low-Frequency (LF) Cetaceans	Cell 1: $L_{p,0-pk,flat}$: 222 dB; $L_{E,p,LF,24h}$: 183 dB	Cell 2: $L_{E,p,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	Cell 3: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p,HF,24h}$: 193 dB	Cell 4: $L_{E,p,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	Cell 5: $L_{p,0-pk,flat}$: 202 dB; $L_{E,p,VHF,24h}$: 159 dB	Cell 6: $L_{E,p,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{p,0-pk,flat}$: 223 dB; $L_{E,p,PW,24h}$: 183 dB	Cell 8: $L_{E,p,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p,OW,24h}$: 185 dB	Cell 10: $L_{E,p,OW,24h}$: 199 dB.
In-Air:		
Phocid Pinnipeds (PA) (In-Air)	Cell 11: $L_{p,0-pk,flat}$: 162 dB; $L_{E,p,PA,24h}$: 140 dB	Cell 12: $L_{E,p,PA,24h}$: 154 dB.
Otariid Pinnipeds (OA) (In-Air)	Cell 13: $L_{p,0-pk,flat}$: 177 dB; $L_{E,p,OA,24h}$: 163 dB	Cell 14: $L_{E,p,OA,24h}$: 177 dB.

¹ Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for NMFS' 2018 Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

NMFS developed optional User Spreadsheet tools to accompany both the 2018 Technical guidance and the 2024 draft Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying these optional tools, we anticipate that the resulting isopleth estimates are typically going to

be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, these optional tools offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as vibratory and impact pile driving, the optional User Spreadsheet tools predict the distance at which, if a marine mammal remained at that distance for the duration of the activity, it will be

expected to incur PTS. Inputs used in the optional User Spreadsheet tools for the proposed IHA based on the Navy's request are reported in table 6. The isopleths calculated for the proposed IHA based on NMFS' 2018 Technical guidance and NMFS' 2024 draft Technical guidance, as well as those considered in the initial IHA (based on NMFS' 2018 Technical guidance), are reported in table 7.

TABLE 6—NMFS USER SPREADSHEET INPUTS

	Vibratory pile driving			Impact pile driving	
	16-Inch timber piles	14-Inch steel H beam	24-Inch steel sheet	16-Inch timber piles	14-Inch steel H beam
Spreadsheet Tab Used	A.1) Non-Impul, Stat, Cont.	A.1) Non-Impul, Stat, Cont.	A.1) Non-Impul, Stat, Cont.	E.1) Impact pile driving.	E.1) Impact pile driving.
Source Level (SPL)	162 dB RMS	147 dB RMS	159 dB RMS	160 dB SEL	170 dB SEL.
Transmission Loss Coefficient	15	15	15	15	15.
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2	2.
Time to install/remove single pile (minutes)	30	30	30	1,800	1,800.
Number of strikes per pile	12	6	30	6	2.
Piles to install/remove per day	10	10	11	10	10.
Distance of sound pressure level measurement (meters).					

TABLE 7—CALCULATED DISTANCES AND AREAS TO THE ESTIMATED LEVEL A (BASED ON NMFS' 2018 TECHNICAL GUIDANCE AND NMFS' PROPOSED 2024 UPDATE TO THE 2018 TECHNICAL GUIDANCE) AND LEVEL B HARASSMENT THRESHOLDS BY PILE TYPE AND PILE DRIVING METHOD FOR THE INITIAL AND PROPOSED IHAS

Activity	Pile description	Authorization period	Piles per day	Level A harassment distances (m) (2018 Technical Guidance/2024 Proposed Update to the 2018 Technical Guidance) ¹		Level A harassment areas (km ²) for all hearing groups ²	Level B harassment distance (m) all hearing groups	Level B harassment areas (km ²) for all hearing groups ²
				PW	OW			
Vibratory Installation/ Removal.	16-inch Timber Piles ...	Initial IHA	3	4.8	0.3	<0.1	³ 6,310	<0.3
		Proposed IHA	12	16.0/45.7	1.1/15.4	<0.1	³ 6,310	<0.3
	14-inch Steel H Beam	Initial IHA	2	0.5	0	<0.1	631	<0.3
		Proposed IHA	6	1.0/2.9	0.1/1.0	<0.1	631	<0.3
	24-inch Steel Sheet	Initial IHA	3	3.4	0.2	<0.1	³ 4,379	<0.3
		Proposed IHA	30	⁴ 20.4/ ⁴ 58.4	⁴ 1.4/ ⁴ 19.7	<0.1	³ 4,379	<0.3
Impact Installation	16-inch Timber Piles ...	Initial IHA	3	36.8	2.7	<0.1	47	<0.1
		Proposed IHA	6	76.5/126.5	5.6/47.1	<0.1	47	<0.1
	14-inch Steel H-Beam	Initial IHA	2	170.6	12.4	<0.1	216	<0.1
		Proposed IHA	2	170.6/282.2	12.4/105.2	<0.1	216	<0.1

¹ The initial IHA only calculated distances to the Level A harassment thresholds based on the 2018 Technical Guidance, whereas the proposed IHA considers calculated distances to the Level A harassment thresholds based on both the 2018 Technical Guidance and the 2024 Proposed Update to the 2018 Technical Guidance.

² Harassment areas have been truncated where appropriate to account for land masses.

³ The maximum harassment distances are approximately 790 m for Wharf 4 South, 795 m for Wharf 4 East, and 655 m for Wharf D due to the presence of land masses in the project area, which truncate sound transmission.

⁴ The Navy made a typographical error made in their calculation of the distance to the Level A harassment thresholds. Specifically they used a sound pressure level measurement distance of 10 m when the correct measurement distance is 11 m. Therefore, the distances provided here are slightly larger than the distances provided in their IHA application.

The stocks taken, methods of take, and types of take remain unchanged from the initial authorization. Here, we estimate the proposed amount of taking by Level B harassment for both species using the same method and rates of daily occurrence for California sea lions (342 individuals) and harbor seals (21 individuals) used in the initial IHA, applied across the proposed 136 days of activity, resulting in 46,512 and 2,856 instances of take by Level B harassment, respectively (table 8). While the

estimated distances to the Level A thresholds and the shutdown zones are larger here than in the initial IHA (see table 7 and the Proposed Mitigation section of this notice), and in some cases larger than the estimated distances to the Level B thresholds (see distances for impact driving in table 7), they are still relatively small (*i.e.*, less than 171 m or 283 m based on NMFS' 2018 Technical Guidance and NMFS' 2024 draft Technical Guidance, respectively) and it is unlikely that an individual

would remain in these zones long enough to incur PTS. Further, we anticipate that the Navy will be able to effectively shut down operations as necessary to avoid any take by Level A harassment. Therefore, take by Level A harassment is not proposed to be authorized. During the initial authorization period, the Navy detected 40 California sea lions and 4 harbor seals within the estimated Level B harassment zone.

TABLE 8—AMOUNT OF AUTHORIZED TAKE IN THE INITIAL IHA AND PROPOSED TAKE AS A PERCENTAGE OF STOCK ABUNDANCE, BY STOCK AND HARASSMENT TYPE

Species	Stock	Authorization	Proposed amount of taking			Percent of stock
			Level A	Level B	Total	
California Sea Lion	U.S	Initial IHA	0	36,960	36,960	14.30
		Proposed IHA	0	46,512	46,512	18.05
Harbor Seal	California	Initial IHA	0	2,016	2,016	6.51
		Proposed IHA	0	2,856	2,856	9.22

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 28517, May 4, 2023), except for the size of the respective shutdown zones as discussed below, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this IHA:

- The Navy would conduct briefings between supervisors and trainees, the marine mammal monitoring team, and Navy staff prior to the start of all in-water pile driving activity, and when new personnel join the work, to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, and operational procedures are clearly understood.

- During all in-water work other than pile driving (*e.g.*, pile placement, boat use), in order to prevent injury from physical interaction with construction equipment, a shutdown zone of 10 m would be implemented. If a marine

mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. If human safety is at risk, the in-water activity would be allowed to continue until it is safe to stop.

- The Navy would establish shutdown zones for all for in-water pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would vary based on the type of

pile installation/removal activity, but are proposed to be larger than the calculated Level A harassment isopleths shown in table 9. The proposed shutdown zones have increased slightly from what was required in the initial

IHA based on the Navy's request to increase the number of piles that may be installed and or removed each day, and in the case of 24-in steel sheets, the longer duration estimated to remove piles with a vibratory hammer (see table

1). The placement of lookouts during all pile driving activities (described in detail in below) would ensure that the entirety of all shutdown zones and Level A harassment zones are visible during pile installation and removal.

TABLE 9—PROPOSED SHUTDOWN ZONES DURING IN-WATER PILE DRIVING ACTIVITIES FOR THE INITIAL AND PROPOSED IHAS

Activity	Pile description	Authorization period	Distance (m) ¹	
			PW	OW
Vibratory Installation/Removal	16-inch Timber Piles	Initial IHA	15	15
		Proposed IHA ...	20/50	≤20/50
	14-inch Steel H Beam	Initial IHA	15	15
		Proposed IHA ...	20/20	20/20
	24-inch Steel Sheet	Initial IHA	15	15
		Proposed IHA ...	² 30/60	² 30/60
Impact Installation	16-inch Timber Piles	Initial IHA	40	40
		Proposed IHA ...	80/130	80/130
	14-inch Steel H-Beam	Initial IHA	175	175
		Proposed IHA ...	175/290	175/290

¹ Shutdown zones for the proposed IHA consider calculated distances to the Level A harassment thresholds based on both the 2018 Technical Guidance and the 2024 Proposed Update to the 2018 Technical Guidance, whereas shutdown zones for the initial IHA only considered calculated distances to the Level A harassment thresholds based on the 2018 Technical Guidance. Here, we are proposing the Navy implement the larger distance as the shutdown zones, which consider the 2024 Proposed Update to the 2018 Technical Guidance.

² The Navy considered a shutdown zone of 20 m due to a typographical error made in their calculation of the distance to the Level A harassment thresholds. Specifically they used a sound pressure level measurement distance of 10 m when the correct measurement distance is 11 m.

- The Navy would delay or shutdown all in-water pile driving activities should an animal approach or enter the appropriate shutdown zone. The Navy could resume in-water pile driving activities after one of the following conditions has been met: (1) the animal is observed exiting the shutdown zone; (2) the animal is thought to have exited the shutdown zone based on a determination of its course, speed, and movement relative to the pile driving location; or (3) the shutdown zone has been clear from any additional sightings for 15 minutes.

- The Navy would employ lookouts trained in marine mammal identification and behaviors to monitor marine mammal presence in the action area. Requirements for numbers and locations of observers will be based on hammer type, pile material, and Seabees training location as described in section 5 of the proposed IHA. Lookouts would track marine mammals observed anywhere within their visual range relative to in-water training activities, and estimate the amount of time a marine mammal spends within the Level A or Level B harassment zones while pile driving activities are underway. The Navy would monitor the project area, including the Level B harassment zones, to the maximum extent possible based on the required number of lookouts, required monitoring locations, and environmental conditions. For all pile

driving and removal activities, at least one lookout would be used.

- The placement of the lookouts during all pile driving and removal activities would ensure that the entire applicable shutdown zones are visible during all in-water pile installation and removal. One observer would be placed in a position to implement shutdown/delay procedures, when applicable, by notifying the hammer operator of a need for a shutdown of pile driving or removal.

- Prior to the start of pile driving or removal, the shutdown zone(s) would be monitored for a minimum of 30 minutes to ensure that they are clear of marine mammals (*i.e.*, pre-clearance monitoring). Pile driving would only commence once observers have declared the shutdown zone(s) are clear of marine mammals. Monitoring would also take place for 30 minutes post-completion of pile driving.

- If in-water work ceases for more than 30 minutes, the Navy would conduct pre-clearance monitoring of both the Level B harassment zone and shutdown zone.

- Pre-start clearance monitoring would be conducted during periods of visibility sufficient for the lead lookout to determine that the shutdown zones indicated in table 5 are clear of marine mammals. Pile driving could commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

- The Navy would use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. A soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft starts would not be used for vibratory pile installation and removal. Lookouts would begin observing for marine mammals 30 minutes before "soft start" or in-water pile installation or removal begins.

- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal would shut down immediately when the animals are sighted.

- If take by Level B harassment reaches the authorized limit for an authorized species, pile installation would be stopped as these species approach the Level B harassment zone to avoid additional take of them.

- Monitoring would be conducted by qualified lookouts with support from Navy biologists, in accordance with the following:

- Navy biologists would train and certify lookouts in accordance with the mitigation, monitoring and reporting requirements of the issued IHA;
- All lookouts would maintain contact via either handheld

communication devices or flags to signal sightings and shutdowns;

- Lookouts would be placed at vantage points to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator;

- The Lead lookout would be located within auditory range of the pile driving team and would have primary responsibility for calling activity shutdowns;

- Lookouts would use a hand-held global positioning device (GPS) device, rangefinder, visual reference points, or marker buoy to verify the required monitoring distance from the project site;

- Monitoring would occur in all-weather until training has concluded for the day;

- Lookouts would scan the waters within the Level A harassment and Level B harassment zones using binoculars (10x42 or similar) and or the naked eye and make visual observations of marine mammals present; and

- Lookouts would record all observations of marine mammals as described in the section 5 of the IHA, regardless of distance from the pile being driven. Lookouts would document any behavioral reactions in concert with distance from piles being driven or removed.

- Lookouts would have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Navy would submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving training activities, or 60 days prior to a requested

date of issuance of any future IHAs for projects at the same location, whichever comes first. NMFS would provide comments within 30 days after receiving the draft report, and the Navy would address the comments and submit revisions within 30 days of receipt. If no comments are received from NMFS within 30 days, the draft report would be considered as final.

The draft and final marine mammal monitoring reports would be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.tyson.moore@noaa.gov*. The reports would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated data sheets. Specifically, the reports would include:

- Dates and times (begin and end) of all marine mammal monitoring;

- Training activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact or vibratory) and the total equipment duration for vibratory installation and removal for each pile or estimated total number of strikes for each pile for impact driving;

- Lookout locations during marine mammal monitoring;

- Environmental conditions during monitoring periods (at beginning and end of lookout shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

- Description of any deviation from initial proposal in pile numbers, pile types, average driving times, *etc.*;

- Brief description of any impediments to obtaining reliable observations during training periods; and

- Description of any impediments to complying with the aforementioned mitigation measures.

Lookouts would record all incidents of marine mammal occurrence in the area in which take is anticipated regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Specifically, lookouts would record the following:

- Name of lookout who sighted the animal(s) and lookout location and activity at time of sighting;

- Time of sighting;

- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), lookout confidence in identification,

and the composition of the group if there is a mix of species;

- Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting);

- Estimated number of animals (min/max/best estimate);

- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);

- Animal's closest point of approach and estimated time spent within the harassment zone;

- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones and shutdown zones, by species; and

- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

Preliminary Determinations

The proposed IHA consists of the same activities analyzed through the initial authorization. The proposed IHA would authorize the incidental take by Level B harassment of California sea lions and harbor seals to up to four 34-day pile driving training exercises. This activity was originally authorized under the initial IHA, but the Navy only completed one, 11-day, exercise. The Navy is requesting an IHA so that it can conduct an additional four training exercises during the proposed authorization period. However, due to emergent training requirements and tempo, the Navy is requesting, in some instances, to install and remove additional piles over additional days during the training exercises than what was analyzed in the initial IHA (*i.e.*, 136 total days considered in the proposed IHA versus 96 days considered in the initial IHA), which results in an increase in the number of takes by Level B harassment proposed for authorization for harbor seals and sea lions (see table 8). In addition, on May 3, 2024 NMFS published and solicited public comment on its draft Updated Technical Guidance (89 FR 36762), which includes updated hearing ranges and names for marine mammal hearing groups as well as updated thresholds and weighting functions to inform

auditory injury estimates (*i.e.*, for Level A harassment). These changes result in slightly larger Level A harassment zones and shutdown zones due to increased durations of pile driving activities. No other changes have been made to the planned activities.

In analyzing the effects of the activities for the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks. There is no new information that affects NMFS' determinations supporting issuance of the initial IHA or this proposed IHA. While the takes by Level B harassment proposed for authorization are greater than the takes by Level B harassment authorized in the initial IHA, the anticipated impacts of the Navy's training exercises on marine mammals is the same as what was considered in the initial IHA (*e.g.*, temporary modifications in behaviors or Temporary Threshold Shifts (TTS) that would not result in fitness impacts to any individuals). In addition, the specified activity and ensonification areas are still very small relative to the overall habitat ranges of all species and do not include habitat areas of special significance (Biologically Important Areas or ESA-designated critical habitat). Lastly, the intensity of anticipated takes by Level B harassment is relatively low for all stocks and would not be of a duration or intensity expected to result in impacts on reproduction or survival. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA, except for the requirement of slightly larger shutdown zones.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of Endangered Species Act (ESA)-listed species is

authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue an HA to the Navy for conducting pile driving training exercises in NBVC for 1 year after the date of issuance, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-pile-driving-exercises-naval-base-ventura-county-port>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the initial IHA), the proposed authorization, and any other aspect of this notice of proposed IHA for the Navy's proposed pile driving training exercises at NBVC. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or

include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 18, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024-24555 Filed 10-22-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE319]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a Recreational Initiative Public Engagement Workshop via webinar.

DATES: The webinar will convene Monday, November 18, 2024, from 6 p.m. to 9 p.m., EST.

ADDRESSES: The workshop will take place via webinar. You may participate by accessing the log-on information by visiting our website at <https://www.gulfcouncil.org>.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630; Emily.Muehlstein@gulfcouncil.org.

SUPPLEMENTARY INFORMATION:

Monday, November 18, 2024; 6 p.m.–9 p.m., EST

The meeting will begin with a brief presentation on the purpose of the Recreational Initiative, provide a brief overview of results of the first Working Group Meeting, and outline the meeting format and expected outcomes. Staff will ask a series of open-ended questions and allow for open public comment on the Recreational Initiative.

Visit the Gulf Council's website for meeting registration information: <https://gulfcouncil.org/recreational-initiative/>. After registering, you will receive a confirmation email containing information about joining the webinar. Public feedback on the Recreational Initiative will also be gathered online through an online feedback tool located at: <https://docs.google.com/forms/d/e/1FAIpQLSfwnQ6AgzIBmgx0k18yzcPpDm0RDUV-zyybR05mxoJVRmBdQg/viewform>.

The meeting will be via webinar only. You may register for the webinar by visiting <https://www.gulfcouncil.org> and click on the meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: October 18, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–24515 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE387]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's (Commission) Summer Flounder, Scup and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Thursday, November 14, 2024, from 2 p.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at <https://www.mafmc.org/council-events>.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at <https://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The objective of this meeting is to discuss 2025 recreational measures (*i.e.*, bag, size, and season limits) for summer flounder, scup, and black sea bass. The Council and Commission previously adopted 2024–25 recreational measures for summer flounder and scup (the same measures across the 2 years). Therefore, Advisors will review the previously adopted 2025 recreational measures for summer flounder and scup and provide input on whether these measures should remain unchanged. Black sea bass recreational measures for 2025 were not previously adopted; therefore, Advisors

will discuss considerations for 2025 black sea bass measures and provide input on the appropriate approach for 2025 black sea bass recreational measures.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 18, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–24516 Filed 10–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–54]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

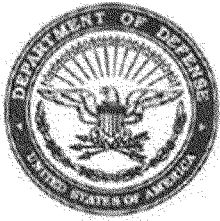
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–54, Policy Justification, and Sensitivity of Technology.

Dated: October 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

July 27, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-54, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Romania for defense articles and services estimated to cost \$120.5 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Romania

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$75.5 million
Other	\$45.0 million

TOTAL \$120.5 million

Funding Source: National Funds
 (iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
 Sixteen (16) Assault Amphibious Vehicles, Personnel Variant (AAVP-7A1)
 Three (3) Assault Amphibious Vehicles, Command Variant

(AAVC-7A1)

Two (2) Assault Amphibious Vehicle, Recovery Variant (AAVR-7A1)
 Sixteen (16) 50 Cal Machine Guns (Heavy Barrel)
 Five (5) 7.62 mm M240B Machine Guns

Non-MDE:

Also included are MK-19 Grenade Launchers; M36E T1 Thermal Sighting Systems (TSS); supply support (spare parts); support equipment (including special

mission kits/Enhanced Applique Kits (EAAK)); training, unclassified technical manuals, technical data package, engineering and technical support and assistance (including Contractor Engineering Technical Services (CETS)); and other related elements of program and logistics support.

(iv) *Military Department: Navy (RO–P–LWL)*

(v) *Prior Related Cases, if any: None*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None known at this time*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: July 27, 2023*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—Assault Amphibious Vehicles

The Government of Romania has requested to buy sixteen (16) Assault Amphibious Vehicles (AAVs), Personnel Variant (AAVP–7A1); three (3) Assault Amphibious Vehicles, Command Variant (AAVC–7A1); two (2) Assault Amphibious Vehicles, Recovery Variant (AAVR–7A1); sixteen (16) 50 Cal Machine Guns (Heavy Barrel); and five (5) 7.62 mm M240B Machine Guns. Also included are MK–19 Grenade Launchers; M36E T1 Thermal Sighting Systems (TSS); supply support (spare parts); support equipment (including special mission kits/Enhanced Applique Kits (EAAK)); training, unclassified technical manuals, technical data package, engineering and technical support and assistance (including Contractor Engineering Technical Services (CETS)); and other related elements of program and logistics support. The total estimated program cost is \$120.5 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a North Atlantic Treaty Organization (NATO) Ally which is an important force for political and economic stability in Europe. It is vital to the U.S. national interest to assist Romania in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Romania's capability to meet current and future threats by modernizing and ensuring Romania's continued expeditionary capability to counter regional threats. Romania will have no

difficulty absorbing this equipment and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

A principal contractor has not been determined for potential sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government personnel but will require the assignment of one (1) contractor representative to Romania for approximately one (1) year to deliver AAVs, related equipment, and support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The mission of the Assault Amphibious Vehicle (AAV) is to maneuver surface assault elements of the landing force and their equipment from assault shipping during amphibious operations to inland objectives and to conduct mechanized operations and related combat support in subsequent operations ashore.

a. The AAV–7A1 family of vehicles includes the personnel variant, which carries troops in amphibious operations from ship to shore, through the surf zone, and to inland objectives. The AAVP–7A1 provides protected transport of up to 25 combat-loaded personnel through all types of terrain.

b. The Command Variant, AAVC–7A1, is an armored assault amphibious full-tracked landing vehicle. The vehicle provides a mobile task force communication center in amphibious operations from ship to shore through surf zone to inland objectives.

c. The Recovery Variant, AAVR–7A1, is an armored assault amphibious full-tracked vehicle. The vehicle is designed to recover similar or smaller size vehicles. It also carries basic maintenance equipment to provide field support maintenance to vehicles in the field.

d. The 50 Cal Machine Gun (Heavy Barrel) is the standard weapon for the AAVP–7A1.

e. The 7.62 mm M240B Machine Gun is the standard weapon for the AAVC–7A1 and the AAVR–7A1.

2. The highest level of classification of defense articles, components, and

services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Romania can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Romania.

[FR Doc. 2024–24489 Filed 10–22–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Designation of Chinese Military Company

AGENCY: Office of the Under Secretary of Defense (Acquisition and Sustainment), Department of Defense.

ACTION: Notice of addition of a company to the Section 1260H List of Chinese Military Companies Operating in the United States.

SUMMARY: The Deputy Secretary of Defense has determined that the entity listed in the **SUPPLEMENTARY INFORMATION** section of this notice qualifies as a “Chinese military company” in accordance with the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Devante Brown (GIES), (703) 695–8545.

SUPPLEMENTARY INFORMATION: Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) requires the Secretary of Defense to make additions or deletions to the most recent list of “Chinese military companies” on an ongoing basis based on the latest information. Paragraph (b)(2) of this section requires the Secretary of Defense to publish the unclassified portion of such list in the **Federal Register**.

The Deputy Secretary of Defense has determined that the following entity qualifies as a “Chinese military

company" in accordance with Section 1260H:

Hesai Technology Co., Ltd. (Hesai)

Dated: October 21, 2024.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 2024-24723 Filed 10-21-24; 4:15 pm]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-0N]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-0N.

Dated: October 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

August 3, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0N. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 19-50 dated August 20, 2019.

Sincerely,

James A. Hursch
Director

Enclosure:

1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 23-0N

Report of Enhancement or Upgrade of Sensitivity of Technology or Capability (Sec. 36(B)(5)(C), AECA)

(i) *Purchaser:* Taipei Cultural and Economic Representative Office (TECRO) in the United States

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 19-50

Date: August 20, 2019

Military Department: Air Force

(iii) *Description:* On August 20, 2019, Congress was notified by Congressional certification transmittal number 19-50 of the possible sale, under Section

36(b)(1) of the Arms Export Control Act, of sixty-six (66) F-16C/D Block 70 aircraft; seventy-five (75) F110 General Electric Engines (includes 9 spares); seventy-five (75) Link-16 Systems (includes 9 spares); seventy-five (75) Improved Programmable Display Generators (iPDG) (includes 9 spares); seventy-five (75) APG-83 Active Electronically Scanned Array (AESA) Radars (includes 9 spares); seventy-five (75) Modular Mission Computers 7000AH (includes 9 spares); seventy-five (75) LN-260 Embedded GPS/INS (includes 9 spares); seventy-five (75) M61 Vulcan 20mm Guns (includes 9 spares); one-hundred thirty-eight (138) LAU-129 Multipurpose Launchers; six (6) FMU-139D/B Fuze for Guided Bombs; six (6) FMU-139D/B Inert Fuze for Guided Bombs; six (6) FMU 152 Fuze for Guided Bombs; six (6) MK-82 Filled Inert Bombs for Guided Bombs; and three (3) KMU-572 Joint Direct Attack Munition (JDAM) Tail Kits, GBU-38/54. Also included are seventy-five (75) AN/ALE-47 Countermeasure Dispensers (includes 9 spares); one-hundred twenty (120) ALE-50 towed decoy or equivalent; seventy-five (75) APX-126 Advanced Identification Friend or Foe (includes 9 spares); seventy five (75) AN/ALQ-211 A(V)4 Airborne Integrated Defensive Electronic Warfare Suite (AIDEWS) or equivalent (includes 9 spares); EW Line Replaceable Unit (LRU) and Standard Electronic Module (SEM) spares; one hundred fifty (150) ARC-238 radios (includes 18 spares); Secure Communications and Cryptographic Appliques including seventy-three (73) KIV-78 cryptographic COMSEC devices, and ten (10) AN/PYQ-10 Simple Key Loaders (SKLs) for COMSEC; three (3) Joint Mission Planning Systems (JMPS); twenty-seven (27) Joint Helmet Mounted Cueing Systems (JHMCS) II with Night Vision Device (NVD) compatibility or Scorpion Hybrid Optical-based Inertial Tracker (HOBIT) helmet mounted cueing system with NVD compatibility; seventy (70) NVDs; six (6) NVD spare image intensifier tubes; Cartridge Actuated Devices/Propellant Actuated Devices (CAD/PAD); cartridges; chaff; flares; three (3) each DSU-38A/B Precision Laser Guidance Sensor (PLGS) for GBU-54 Laser Joint Direct Attack Munition (LJDAM) integration; PGU-28A/B 20mm ammunition; telemetry units for integration and test; bomb components; twenty (20) ground debriefing stations; Electronic Combat International Security Assistance Program (ECISAP) support including EW database and Mission Data File (MDF) development (classified/

unclassified); communications equipment; classified/unclassified spares, repair, support equipment, test equipment, software delivery/support, personnel training, training equipment, flight/tactics manuals, publications and technical documentation; bomb racks; Organizational, Intermediate and Depot level tooling; Pilot Life Support Equipment (PLSE); Alternate Mission Equipment (AME); ground training devices (including flight and maintenance simulators); containers; development, integration, test and engineering, technical and logistical support of munitions; aircraft ferry; studies and surveys; construction services; U.S. Government and contractor engineering, technical and logistical support services; and other related elements of logistics, program and sustainment support. The estimated total cost was \$8.0 billion. Major Defense Equipment (MDE) constituted \$5.1 billion of this total.

On April 21, 2021, Congress was notified by Congressional certification transmittal number 21-0E of the addition of fifty-seven (57) Sniper Advanced Targeting Pods (ATPs) (AN/AAQ-33) (MDE). The following non-MDE items were also included: Infrared Search and Track (IRST) pods (IRST International); IRST and Sniper ATP shipping containers; pylons; spare parts; repair and return; publications and technical documentation; software support; integration and test support; U.S. Government and Contractor engineering, technical and logistics support; and additional familiarization training. Additionally, this transmittal amended the original CN's reference to a specific electronic warfare system, to a successfully engineered and tested future Electronic Warfare (EW) Suite, integrated on the F-16V Block 70 aircraft. The total cost of the new MDE articles was \$154.33 million, and the total cost of the new non-MDE articles was \$307.52 million. The total notified cost of MDE did not increase, and the total notified case value remained \$8.0 billion.

This transmittal reports the addition of the following MDE items: eighty-six (86) Multifunctional Information Distribution Systems with Low Volume Terminals (MIDS-LVTs); eighty-six (86) LAU-129 Multi-purpose Launchers; seven (7) Embedded Global Positioning Systems/Inertial Navigation Systems (GPS/INS) (EGI) devices with Selective Availability Anti-Spoofing Module (SAASM) or M-Code; and the option to replace up to two (2) of the previously notified LN-260 EGIs with EGIs with M-Code. The following non-MDE items will also be included: KY-58

narrowband/wideband COMSEC devices and Computer Program Identification Numbers (CPINs) (not identified in the original notification), in addition to Low Volume Terminal (LVT) Cryptographic Modules (LCMs), and additional AN/PYQ-10 SKLs and helmet-mounted cueing systems. The total estimated value of the additional items is \$56.3 million. The estimated total MDE value remains \$5.1 billion, and the estimated total case value remains \$8.0 billion.

(iv) *Significance*: This notification is being provided because the additional MDE items were not enumerated in the original notification. The inclusion of this MDE represents an increase in capability over what was previously notified. The proposed sale will improve the recipient's ability to operate its fleet of F-16 C/D Block 70 aircraft.

(v) *Justification*: This proposed sale is consistent with U.S. law and policy as expressed in Title 22 U.S.C. 3301 (Public Law 96-8). This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. It will also help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

(vi) *Sensitivity of Technology*: The Multifunctional Information Distribution System with Low Volume Terminal (MIDS-LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. MIDS-LVT is intended to support key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all Services and allied forces. LVT Cryptographic Modules (LCMs) will also be included in this potential sale.

The Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) with Selective Availability Anti-Spoofing Module (SAASM)—or M-Code receiver when available—and Precise Positioning Service (PPS) is a self-contained navigation system that provides information on the following: acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and coordinated universal time (UTC) synchronized time. SAASM

or M-Code enables the GPS receiver access to the encrypted P(Y) code or M-code signal, providing protection against active spoofing attacks.

The KY-58 is a secure voice module primarily used to encrypt radio communication to and from military aircraft and other tactical vehicles.

The Sensitivity of Technology Statement contained in the original notification applies to additional items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: August 3, 2023

[FR Doc. 2024-24494 Filed 10-22-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-51]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-51, Policy Justification, and Sensitivity of Technology.

Dated: October 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

July 19, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-51, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Germany for defense articles and services estimated to cost \$2.9 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-51

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Germany

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$2.46 billion
Other	\$0.44 billion
TOTAL	\$2.90 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to nine hundred sixty-nine (969) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

Up to twelve (12) AIM-120C-8 AMRAAM Guidance Sections

Non-MDE:

Also included are AIM-120 Captive Air Training Missiles (CATM); telemetry kit and control section spares and containers; KGV-135A

Communications Security (COMSEC) devices; Common Munitions Built-in-Test Reprogramming Equipment (CMBRE); ADU-891 Computer Test Set Adapter Groups; munitions support and support equipment; classified software delivery and support; spare parts, consumables, accessories, and repair and return support; transportation support; classified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical

and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department: Air Force (GY-D-YAE)*

(v) *Prior Related Cases, if any: GY-D-YAD*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None known at this time*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: July 19, 2023*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Germany—AIM-120C-8 Advanced Medium-Range Air-to-Air Missiles (AMRAAM)

The Government of Germany has requested to buy up to nine hundred sixty-nine (969) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); and up to twelve (12) AMRAAM C8 Guidance Sections. Also included are AIM-120 Captive Air Training Missiles (CATM); telemetry kit and control section spares and containers; KGV-135A Communications Security (COMSEC) devices; Common Munitions Built-in-Test Reprogramming Equipment (CMBRE); ADU 891 Computer Test Set Adapter Groups; munitions support and support equipment; classified software delivery and support; spare parts, consumables, accessories, and repair and return support; transportation support; classified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated total cost is \$2.90 billion.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a North Atlantic Treaty Organization (NATO) ally that is an important force for political and economic stability in Europe.

The proposed sale will improve Germany's capability to meet current and future threats by ensuring they have modern, capable air-to-air munitions. This sale will further advance the already high level of German Air Force interoperability with U.S. joint forces and other regional and NATO forces. Germany already has AMRAAMs in its inventory and will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles and Defense, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Federal Republic of Germany.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-51

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM-120C-8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. This potential sale will include Captive Air Training Missiles (CATM) as well as guidance section, control section, and telemetry system spares and containers.

2. The KGV-135A is a high-speed, general purpose encryptor/decryptor module used for wide-band data encryption.

3. Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE) is supporting equipment used to interface with weapon systems to initiate and report BIT results and upload/download flight software. CMBRE supports multiple munitions platforms with a range of applications that perform preflight checks, periodic maintenance checks, loading of Operational Flight Program (OFFP) data, loading of munitions mission planning data, loading of Global Positioning System (GPS) cryptographic keys, and declassification of munitions memory.

4. The ADU-891 Computer Test Set Adapter Groups provide the physical and electrical interface between the CMBRE and missile.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the Government of Germany can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Germany.

[FR Doc. 2024-24491 Filed 10-22-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees—Defense Advisory Committee on Diversity and Inclusion

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Defense Advisory Committee on Diversity and Inclusion (DAC-DI).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-697-1142.

SUPPLEMENTARY INFORMATION: The DAC-DI is being renewed in accordance with chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the "Federal Advisory Committee Act" or "FACA"), 5 U.S.C. 552b (commonly known as the "Government in the Sunshine Act"), and 41 Code of Federal Regulations (CFR) and 102-3.50. The charter and contact information for the DAC-DI's Designated Federal Officer (DFO) are found at <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation>.

The DAC-DI shall examine and provide independent recommendations to improve racial/ethnic diversity, inclusion, and equal opportunity within the DoD, as determined by the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority"), or the Under Secretary of Defense for Personnel and Readiness

(USD(P&R)). All DAC–DI work will be in response to written terms of reference approved by the DoD Appointing Authority or the USD(P&R) unless otherwise provided by in statute or Presidential directive.

The DAC–DI shall be composed of no more than 20 members, who have distinguished backgrounds and experience in one or more of the following disciplines: defense or national security, organizational or human resources management, constitutional or employment law, and diversity and inclusion. These members will come from varied backgrounds including academia and the public and private sectors.

DAC–DI members who are not full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services, shall be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DAC–DI members who are full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services, shall be designated pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members. The DoD Appointing Authority shall appoint the DAC–DI’s leadership from among the

membership previously appointed in accordance with DoD policy and procedures, for a term of service of one-to-two years, with annual renewal, which shall not exceed the member’s approved DAC–DI appointment or designation.

DAC–DI members are appointed or designated to exercise their own best judgement on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner that is free from conflicts of interest. With the exception of reimbursement of official DAC–DI-related travel and per diem, DAC–DI members serve without compensation.

The public or interested organizations may submit written statements to the DAC–DI about the DAC–DI’s mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DAC–DI. All written statements shall be submitted to the DFO for the DAC–DI, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: October 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–24488 Filed 10–22–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–0M]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

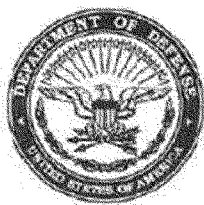
SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–0M.

Dated: October 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

July 31, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0M. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 21-24 dated March 12, 2021.

Sincerely,

James A. Hursch
 Director

Enclosure:
 1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 23-0M

REPORT OF ENHANCEMENT OR
 UPGRADE OF SENSITIVITY OF
 TECHNOLOGY OR CAPABILITY (SEC.
 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of
 Germany

(ii) *Sec. 36(b)(1), AECA Transmittal*
 No.: 21-24

Date: March 12, 2021

Implementing Agency: Navy

(iii) *Description:* On March 12, 2021,
 Congress was notified by Congressional
 certification transmittal number 21-24
 of the possible sale, under Section
 36(b)(1) of the Arms Export Control Act,
 of five (5) P-8A Patrol Aircraft; nine (9)
 Multifunctional Information
 Distribution System Joint Tactical Radio
 Systems 5 (MIDS JTRS 5); and twelve
 (12) LN-251 with Embedded Global

Positioning Systems (GPS)/Inertial
 Navigations Systems (EGIs). Also
 included were commercial engines;
 Tactical Open Mission Software
 (TOMS); Electro-Optical (E.O.) and
 Infrared MX-20HD; AN/AAQ-2(V) I
 Acoustic System; AN/APY-10 radar;
 ALQ-240 Electronic Support Measures;
 NexGen Missile Warning Sensors; AN/
 PRC-117G Manpack radios include
 MPE-S type II with SAASM 3.7; Global
 Positioning Systems (GPS) 524D Precise
 Positioning System (PPS) for APY-10
 Radar; AN/ALQ-213 Electronic Counter
 Measures; AN/ALE-47 Counter
 Measures Dispensing Systems; AN/UPX
 IFF Interrogators; APX-123A(C) IFF
 Digital Transponders; KIV-78 IFF Mode
 5 Cryptographic Appliques; CCM-701A
 Cryptographic Core Modules; KY-100M,
 KY-58, KYV-5 for HF-121C radios; AN/
 PYQ-10 V3 Simple Key Loaders (SKL)

with KOV-21 Cryptographic Appliques;
 aircraft spares; spare engine; support
 equipment; operational support
 systems; training; training devices;
 maintenance trainer/classrooms;
 publications; software; engineering
 technical assistance (ETA); logistics
 technical assistance (LTA); Country
 Liaison Officer (CLO) support;
 Contractor Engineering Technical
 Services (CETS); repair and return
 (RoR); transportation; aircraft ferry;
 other associated training and support;
 and other related elements of logistics
 and program support. The total
 estimated program cost was \$1.77
 billion. Major Defense Equipment
 (MDE) constituted \$1.10 billion of this
 total.

On April 1, 2022, Congress was
 notified by Congressional certification
 transmittal number 0D-22 of the

inclusion of the following Major Defense Equipment (MDE) items: eight (8) LAIRCM System Processor Replacements (LSPR) (each included 8 Exelis EGR Global Positioning System (GPS) Receivers integrated with Selective Availability Anti-Spoofing Modules (SAASM); and seven (7) Guardian Laser Transmitter Assemblies (GLTA)). The following non-MDE items were also included: AN/ARC 210 RT-2036(C) radios; Control Interface Unit (CIU) for the AN/AAQ 24(V)N; dual KIV-7Ms; CCM-700A cryptographic modules; KG-175 Encryptor Network Convergence Systems; Advanced Digital Antenna Production (ADAP) Antenna Electronics (AE); and Advanced Digital Antenna Production (ADAP) Controlled Reception Pattern Antenna (CRPA) antennas. The total value of these new items was \$13.5 million but did not cause an increase in the total estimated program cost, as pricing was factored in the initial notification. The total estimated program cost remained \$1.77 billion, with the total MDE cost remaining \$1.10 billion of total program cost.

This transmittal reports the addition of the following MDE items: three (3) P-8A Patrol Aircraft; six (6) Multifunctional Information Distribution System Joint Tactical Radio Systems 5 (MIDS JTRS 5); seven (7) LN-251 with Embedded Global Positioning Systems (GPS)/Inertial Navigation Systems (EGIs); five (5) Large Aircraft Infrared Countermeasures (LAIRCM) System Processor Replacements (each includes five (5)) Exelis EGR Global Positioning System (GPS) Receivers integrated with Selective Availability Anti-Spoofing Modules (SAASM); and four (4) Guardian Laser Transmitter Assemblies (GLTA). The following non-MDE items will also be included: aircraft spare parts; spare engines; support equipment; operational support systems; training; training devices; software; engineering technical assistance (ETA); logistics technical assistance (LTA); RoR; transportation; aircraft ferry; and other related elements of engineering, logistics, and program management support. The addition of these items will result in a net increase in MDE cost of \$800 million, resulting in a revised MDE cost of \$1.9 billion. The total estimated case value will increase to \$3.2 billion.

(iv) *Significance*: This notification is being provided as the additional MDE items were not enumerated in the original notifications. The proposed articles and services will support Germany's capability to meet current and future threats by providing critical capabilities to coalition maritime operations and will increase interoperability between the United States and Germany.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the United States by improving the security of a North Atlantic Treaty Organization (NATO) Ally which is an important force for political and economic stability in Europe.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to the items reported here. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: July 31, 2023

[FR Doc. 2024-24493 Filed 10-22-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Removal of Designated Chinese Military Companies

AGENCY: Office of the Under Secretary of Defense (Acquisition and Sustainment), Department of Defense.

ACTION: Notice of removal of a company from the 2023 Section 1260H List of Chinese Military Companies Operating in the United States.

SUMMARY: The Deputy Secretary of Defense has decided to delist the entity listed in the **SUPPLEMENTARY INFORMATION** section of this notice from the list of "Chinese military companies" in accordance with the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, without prejudice to relisting the company on additional or supplementary grounds.

FOR FURTHER INFORMATION CONTACT: Mr. Devante Brown (GIES), (703) 695-8545.

SUPPLEMENTARY INFORMATION: Section 1260H of the William M. (Mac)

Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) requires the Secretary of Defense to list "Chinese military companies" that meet the statutory criteria annually until December 31, 2030. Paragraph (b)(2) of this section requires the Secretary of Defense to publish the unclassified portion of such list in the **Federal Register**.

The Deputy Secretary of Defense has decided to delist the following entity from the list of "Chinese military companies" in accordance with section 1260H, without prejudice to relisting the entity on additional or supplementary grounds:

Hesai Technology Co., Ltd. (Hesai)

Dated: October 21, 2024.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 2024-24726 Filed 10-21-24; 4:15 pm]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-53]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-53, Policy Justification, and Sensitivity of Technology.

Dated: October 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

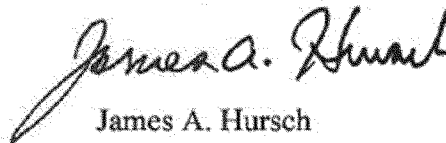
August 1, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-53, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Finland for defense articles and services estimated to cost \$395 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,


 James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-53

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Finland

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$ 0
Other	\$395 million
TOTAL	\$395 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
 None

Non-MDE:

Upgrade M270A1 Multiple Launch Rocket Systems (MLRS) to M270A2 configuration. The upgrade will include: intercom systems; radio communication mounts; machine gun mounts; battle management system vehicle integration kits; publications for MLRS; spares; services; support equipment; and other related elements of logistics and program support.

(iv) *Military Department:* Army (FI-B-VBI).

(v) *Prior Related Cases, if any:* FI-B-VBX.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* August 1, 2023.

* As defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Finland—M270A2 Multiple Launch Rocket System (MLRS) Upgrade

The Government of Finland has requested to buy the M270A2 upgrade for its M270A1 Multiple Launch Rocket Systems (MLRS). The upgrade will include: intercom systems; radio communication mounts; machine gun mounts; battle management system vehicle integration kit; publications for MLRS; spares; services; support equipment; and other related elements of program and logistics support. The estimated total cost is \$395 million.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a North Atlantic Treaty Organization (NATO) Ally that is an important force for political stability and economic progress in Europe.

The proposed sale will improve Finland's capability to meet current and future threats and will enhance interoperability with U.S. forces and other allied forces. Finland will have no difficulty absorbing this upgrade into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Lockheed Martin Inc., Grand Prairie, TX; Chelton Inc., Marlow, United Kingdom; Leonardo DRS, Arlington, VA; and Loc Performance Products, Inc., Plymouth, MI. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Finland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–53

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The M270 Multiple Launch Rocket System (MLRS) is a full spectrum, combat proven all-weather, lethal, and responsive, tracked precision strike weapons system assigned to Field Artillery Brigades (FABs) supporting Brigade Combat Teams (BCTs). All variants of the M270 consists of a modified M993A1 Bradley Carrier mounted with the M269 Launcher Loader Module (LLM). The M270A2 fires all current MLRS and Guided

MLRS (GMLRS) rockets and all Army Tactical Missile System (ATACMS) variants. The M270A2 is air transportable by C–5 and C–17 aircraft. Recent upgrades include the Driver Vision Enhancer, Blue Force Tracker, and long-range communications modifications. The M270A2 houses an Improved Armored Cab (IAC) for enhanced crew survivability. The M270A2 incorporates the Common Fire Control System (CFCFS) and the Improved Launcher Mechanical System (ILMS) modifications.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Government of Finland can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to Finland.

[FR Doc. 2024–24492 Filed 10–22–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, November 18, 2024; 1–4:15 p.m. EST.

Tuesday, November 19, 2024; 9 a.m.–3:30 p.m. EST.

ADDRESSES: HUB West, 1st Floor Multipurpose Room, 631 Chafee Avenue, Augusta, Georgia 30904. The meeting will also be streamed on

YouTube, no registration is necessary; links for the livestream can be found on the following website: <https://cab.srs.gov/srs-cab.html>.

FOR FURTHER INFORMATION CONTACT:

James Tanner, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 646–2167; or Email: james.tanner@srs.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

Monday, November 18, 2024:

Chair Update
Agency Updates
Subcommittee Updates
Program Presentations
Board Business
Public Comments

Tuesday, November 19, 2024:

Program Presentations
Public Comments
Board Business and Voting

Public Participation: The meeting is open to the public. To register for in-person attendance, please send an email to srscitizensadvisoryboard@srs.gov no later than 4 p.m. EST on Thursday, November 14, 2024. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Tanner at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to srscitizensadvisoryboard@srs.gov. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4 p.m. EST on Tuesday, November 26, 2024. Please submit comments to srscitizensadvisoryboard@srs.gov. The Deputy Designated Federal

Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling James Tanner at the email address or telephone number listed above. Minutes will also be available at the following website: <https://cab.srs.gov/srs-cab.html>.

Signing Authority: This document of the Department of Energy was signed on October 18, 2024, by David Borak, Committee Management Officer, 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 18, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024-24573 Filed 10-22-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Department of Energy, Office of Electricity.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee (EAC). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 19, 2024; 12:30 to 5:35 p.m. EST.

ADDRESSES: The November meeting of the EAC will be held at the National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd., Arlington, VA 22203. Members of the public are encouraged to participate virtually, however, limited physical space is available for members of the public to attend onsite. To register to attend either in-person or virtually,

please visit the meeting website: <https://www.energy.gov/oe/electricity-advisory-committee-november-2024-meeting>. You must register to receive the Webex meeting invitation.

FOR FURTHER INFORMATION CONTACT: Ms. Jayne Faith, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586-2983 or Email: Jayne.Faith@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The EAC was established in accordance with the provisions of FACA, as amended, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector.

Tentative Agenda

Tuesday, November 19, 2024

12:15 p.m.–12:30 p.m. WebEx
Attendee Sign-On
12:30 p.m.–12:45 p.m. Welcome,
Introductions
12:45 p.m.–1:15 p.m. Introductory
Remarks from the Office of Electricity
1:15 p.m.–2:15 p.m. Energy Storage
Discussion
2:15 p.m.–3:15 p.m. Supply Chain
Discussion
3:15 p.m.–3:30 p.m. Break
3:30 p.m.–5:00 p.m. Reliability and
Resilience Discussion
5:00 p.m.–5:10 p.m. Subcommittee
Updates
5:10 p.m.–5:25 p.m. Public Comments
5:25 p.m.–5:35 p.m. Wrap-up and
Adjourn the November 2024 Meeting
of the EAC

The meeting agenda and times may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: <https://www.energy.gov/oe/electricity-advisory-committee-november-2024-meeting>.

Public Participation: The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on November 19, 2024, but must register in advance by 12 p.m. Eastern time on November 19, 2024, by sending a written request identified by “Electricity Advisory Committee November 2024 Meeting,” to Ms. Jayne Faith at Jayne.Faith@hq.doe.gov. Approximately 15 minutes

will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by “Electricity Advisory Committee November 2024 Meeting,” to Ms. Jayne Faith at Jayne.Faith@hq.doe.gov.

Minutes: The minutes of the EAC meeting will be posted on the EAC web page at <https://www.energy.gov/oe/electricity-advisory-committee-november-2024-meeting>. They can also be obtained by contacting Ms. Jayne Faith as described in the **ADDRESSES** section of this notice.

Signing Authority: This document of the Department of Energy was signed on October 18, 2024, by David Borak, Committee Management Officer, 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 18, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024-24571 Filed 10-22-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 21, 2024; 5:30–7 p.m. CST.

ADDRESSES: West Kentucky Community and Technical College, Emerging

Technology Center, Room 215, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Robert “Buz” Smith, Federal Coordinator, by Phone: (270) 441–6821 or Email: Robert.Smith@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Administrative Activities
- Public Comment Period

Public Participation: The meeting is open to the public. The EM SSAB, Paducah will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert “Buz” Smith in advance of the meeting. The Department of Energy will hear oral public comments during the meeting. A public comment period up to 15 minutes will take place at the end of the agenda. Individual oral comments are to be limited to two minutes per speaker. Written statements may be filed either before or after the meeting. Written comments submitted by 5 p.m. CST on Friday, November 29, 2024, will be included in the minutes. Please submit written comments to Zachery Boyarski at Zachary.Boyarski@pppo.gov with “Public Comment” in the subject line. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: <https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials>.

Signing Authority: This document of the Department of Energy was signed on October 18, 2024, by David Borak, Committee Management Officer, 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 18, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024–24568 Filed 10–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 19, 2024; 6–8 p.m. EST.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Federal Coordinator, by Phone: (740) 897–3737 or Email: greg.simonton@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Presentation
- Administrative Activities
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth will make every effort to accommodate persons with physical disabilities or special needs. If you

require special accommodations due to a disability, please contact Greg Simonton in advance of the meeting. The Department of Energy will hear oral public comments during the meeting. A public comment period up to 15 minutes will take place at the end of the agenda. Individual oral comments are to be limited to two minutes per speaker. Written statements may be filed either before or after the meeting. Written comments submitted by 5 p.m. EST on Friday, November 29, 2024, will be included in the minutes. Please submit written comments to Greg Simonton with “Public Comment” in the subject line. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Minutes will be available by writing or calling Greg Simonton, Federal Coordinator, U.S. Department of Energy, Portsmouth/Paducah Project Office, P.O. Box 700, Piketon, OH 45661, Email: greg.simonton@pppo.gov or by Phone: (740) 897–3737. Minutes will also be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signing Authority: This document of the Department of Energy was signed on October 18, 2024, by David Borak, Committee Management Officer, 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 18, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024–24579 Filed 10–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC25–2–000]

Shell Pipeline Company LP; Notice of Filing

Take notice that on October 15, 2024, Shell Pipeline Company LP requested

from the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) approval of the accounting entries related to its agreement for the sale of its COLEX Terminal and Sinco Pipeline assets with Edgewater Midstream.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225

Wilkins Avenue, Rockville, Maryland 20852.

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.

Comment Date: 5 p.m. Eastern Time on November 6, 2024.

Dated: October 16, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024-24480 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-6-000]

Southern Natural Gas Company, L.L.C.; Notice of Application and Establishing Intervention Deadline

Take notice that on October 15, 2024, Southern Natural Gas Company, L.L.C. (Southern), 569 Brookwood Village, Suite 600, Birmingham, Alabama 35209, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations to amend facilities previously authorized as part of the Bessemer Calera Expansion Project (Project) in Docket No. CP24-32-000 pursuant to Southern's blanket certificate. Southern requests authorization to install a 1.63-mile-long segment of pipeline looping with an 8-inch-diameter pipeline in place of the originally authorized 4-inch-diameter pipeline, located in Shelby County, Alabama (Longview Lateral Loop). Southern states that the increased diameter will not change Project capacity, which was fully subscribed by Spire Alabama Inc. (Spire), but rather increase pressure stability, providing Spire operational flexibility and greater reliability in serving industrial and residential customers in the area. Southern estimates the total cost of the Project to increase by approximately \$2 million, to a total of \$27 million, all as more fully set forth in the application

which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions regarding the proposed project should be directed to Tina Hardy, Director, Regulatory Affairs, Southern Natural Gas Company, L.L.C., 569 Brookwood Village, Suite 600, Birmingham, Alabama 35209, phone (205) 325-3668 or email tina_hardy@kindermorgan.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

¹ 18 CFR 157.9.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on November 6, 2024. How to file protests, motions to intervene, and comments is explained below.

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.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before November 6, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP25-6-000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the

Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP25-6-000).

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. *However, the filing of a comment alone will not serve to make the filer a party to the proceeding.* To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently

challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is November 6, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP25-6-000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP25-6-000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

by mail at: Tina Hardy, Director, Regulatory Affairs, Southern Natural Gas Company, L.L.C., 569 Brookwood Village, Suite 600, Birmingham, Alabama 35209 or by email (with a link to the document) at tina_hardy@kindermorgan.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.¹¹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the “eLibrary” link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Intervention Deadline: 5 p.m. Eastern Time on November 6, 2024.

Dated: October 16, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–24477 Filed 10–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–020]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on October 15, 2024, the North American Electric Reliability Corporation submitted an annual report on the Find, Fix, Track and Compliance Exception programs, in accordance with the Federal Energy Regulatory Commission's (Commission) Orders.¹

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such notices, motions, or protests must be filed on or before the comment date.

The Commission encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filing is accessible online through the Commission's Home Page (<http://www.ferc.gov>) using the “eLibrary” link. For assistance with any FERC Online service, email FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY, (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, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5 p.m. Eastern Time on October 30, 2024.

¹ See *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012); *N. Am. Elec. Reliability Corp.*, 143 FERC ¶ 61,253 (2013); *N. Am. Elec. Reliability Corp.*, 148 FERC ¶ 61,214 (2014); *N. Am. Elec. Reliability Corp.*, Docket No. RC11–6–004 (Nov. 13, 2015) (delegated letter order).

Dated: October 16, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–24476 Filed 10–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–76–000.
Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/16/24 to be effective 12/1/2024.

Filed Date: 10/16/24.
Accession Number: 20241016–5165.
Comment Date: 5 p.m. ET 10/28/24.

Docket Numbers: RP25–77–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—PSEG 911938 eff 11–1–2024 to be effective 11/1/2024.

Filed Date: 10/17/24.
Accession Number: 20241017–5041.
Comment Date: 5 p.m. ET 10/29/24.

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.

Filings in Existing Proceedings

Docket Numbers: RP25–5–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Tariff Amendment: 10.17.24 Negotiated Rates—Citadel Energy Marketing LLC R–7705–25 to be effective 11/1/2024.

Filed Date: 10/17/24.
Accession Number: 20241017–5025.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: RP25–6–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Tariff Amendment: 10.17.24 Negotiated Rates—Citadel Energy Marketing LLC R–7705–26 to be effective 11/1/2024.

Filed Date: 10/17/24.
Accession Number: 20241017–5026.

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: RP25–8–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Tariff Amendment: 10.17.24 Negotiated Rates—Citadel Energy Marketing LLC R–7705–27 to be effective 11/1/2024.

Filed Date: 10/17/24.

Accession Number: 20241017–5027.

Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: RP25–9–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Tariff Amendment: 10.17.24 Negotiated Rates—Citadel Energy Marketing LLC R–7705–28 to be effective 11/1/2024.

Filed Date: 10/17/24.

Accession Number: 20241017–5028.

Comment Date: 5 p.m. ET 10/29/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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 17, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–24519 Filed 10–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–72–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.16.24 Negotiated Rates—Trailstone Energy Marketing, LLC R–8135–02 to be effective 11/1/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5051.

Comment Date: 5 p.m. ET 10/28/24.

Docket Numbers: RP25–73–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.16.24 Negotiated Rates—Trailstone Energy Marketing, LLC R–8135–03 to be effective 11/1/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5053.

Comment Date: 5 p.m. ET 10/28/24.

Docket Numbers: RP25–74–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.16.24 Negotiated Rates—Vitol Inc. R–7495–22 to be effective 11/1/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5056.

Comment Date: 5 p.m. ET 10/28/24.

Docket Numbers: RP25–75–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.16.24 Negotiated Rates—Vitol Inc. R–7495–23 to be effective 11/1/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5061.

Comment Date: 5 p.m. ET 10/28/24.

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/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: October 16, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–24475 Filed 10–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25–11–000.

Applicants: Hummingbird Energy Storage, LLC.

Description: Hummingbird Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/17/24.

Accession Number: 20241017–5051.

Comment Date: 5 p.m. ET 11/7/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–148–000.

Applicants: Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project And Union Of Concerned Scientists v. PJM Interconnection, L.L.C.

Description: Motion of PJM Interconnection, L.L.C. to Delay the Reliability Pricing Model Auctions Beginning with the December, 2024 Base Residual Auction for Delivery Year 2026/2027 through the 2029/2030 Delivery Year, et al.

Filed Date: 10/15/24.

Accession Number: 20241015–5541.

Comment Date: 5 p.m. ET 10/22/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–282–004.
Applicants: El Paso Electric Company.
Description: Compliance filing: eTariff Correction for Settlement Compliance; Request for Ten-Day Comment Period to be effective 1/1/2022.
Filed Date: 10/17/24.
Accession Number: 20241017–5083.
Comment Date: 5 p.m. ET 10/28/24.
Docket Numbers: ER24–1306–002.
Applicants: Windy Flats Partners, LLC.
Description: Refund Report: Refund Report to be effective N/A.
Filed Date: 10/17/24.
Accession Number: 20241017–5000.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER24–2345–000.
Applicants: SEPV Cuyama, LLC.
Description: Refund Report: Refund Report to be effective N/A.
Filed Date: 10/17/24.
Accession Number: 20241017–5136.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER24–2720–000.
Applicants: Ohio Power Company.
Description: Refund Report: Refund Report: RS#400 Ohio Power Company—TrAILCo Kammer O&M Agreement to be effective N/A.
Filed Date: 10/17/24.
Accession Number: 20241017–5039.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER24–2827–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Report Filing: American Electric Power Service Corporation submits tariff filing per : AEP Supplement to the Revised IA SA No. 1462 in ER24–2827 to be effective N/A.
Filed Date: 10/17/24.
Accession Number: 20241017–5160.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–118–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection L.L.C.'s request for Waiver to delay the Reliability Pricing Model auctions for delivery year 2026/2027 through the 2029/2030 delivery years, Request for Expedited Action by 09/08/2024 et al.
Filed Date: 10/15/24.
Accession Number: 20241015–5557.
Comment Date: 5 p.m. ET 10/22/24.
Docket Numbers: ER25–123–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: RS 181—Concurrence—Pronghorn Interconnection at Antelope Substation to be effective 12/15/2024.
Filed Date: 10/16/24.
Accession Number: 20241016–5211.
Comment Date: 5 p.m. ET 11/6/24.
Docket Numbers: ER25–124–000.

Applicants: Illinois Winds LLC.
Description: Baseline eTariff Filing: Illinois Winds LLC MBR Tariff to be effective 12/2/2024.
Filed Date: 10/16/24.
Accession Number: 20241016–5222.
Comment Date: 5 p.m. ET 11/6/24.
Docket Numbers: ER25–125–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submit Capital Budget Quarterly Filing for Third Quarter of 2024.
Filed Date: 10/15/24.
Accession Number: 20241015–5559.
Comment Date: 5 p.m. ET 11/5/24.
Docket Numbers: ER25–126–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Concurrence IPL Amended Exhibits and Attachments (2024) to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5034.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–127–000.
Applicants: Wheatsborough Solar, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 12/2/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5062.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–128–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreements Nos. 218 and 335 – Mead Phoenix to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5067.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–129–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Walnut Branch Solar LGIA Filing to be effective 10/7/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5082.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–130–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5981; Queue No. AG1–386 to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5094.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–131–000.
Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2024–10–17 Implement Queue Mgmt Proposals—Inter. Process Enhancements 2023 to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5112.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–132–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to AC1–167 AE2–322, ISA SA No. 6517 to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5114.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–133–000.
Applicants: Hummingbird Energy Storage, LLC.
Description: Baseline eTariff Filing: Hummingbird Energy Storage, LLC MBR Tariff to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5152.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–134–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: Revised Tariff Sheets for Recovery of Costs for 2025 Operation of NESCOE to be effective 1/1/2025.
Filed Date: 10/17/24.
Accession Number: 20241017–5156.
Comment Date: 5 p.m. ET 11/7/24.
Docket Numbers: ER25–135–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 5796; AC2–112 re: withdrawal to be effective 12/17/2024.
Filed Date: 10/17/24.
Accession Number: 20241017–5158.
Comment Date: 5 p.m. ET 11/7/24.
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.
 Any person desiring to intervene, 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.
 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 17, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-24527 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL25-2-000; Docket No. EL25-3-000; Docket No. EL25-4-000]

Tri-State Generation and Transmission Association, Inc.; Deseret Generation & Transmission Co-Operative, Inc.; Basin Electric Power Cooperative, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On October 17, 2024, the Commission issued an order in Docket Nos. EL25-2-000, EL25-3-000, and EL25-4-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Tri-State Generation and Transmission Association, Inc.'s, Deseret Generation & Transmission Co-Operative, Inc.'s, and Basin Electric Power Cooperative, Inc.'s Open Access Transmission Tariffs are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Pub. Serv. Co. of Colo.*, 189 FERC ¶ 61,028 (2024).

The refund effective date in Docket Nos. EL25-2-000, EL25-3-000, and EL25-4-000 established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket Nos. EL25-2-000, EL25-3-000, and EL25-4-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2024), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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 17, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-24523 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5737-032]

Santa Clara Valley Water District; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Surrender of Exemption, Schedule for Environmental Review, and Request for Comments

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Anderson Dam Project No. 5737 (Exemption) involving the proposal by the Santa Clara Valley Water District (Valley Water) to retrofit the Anderson Dam and to surrender the Exemption¹ located on Coyote Creek, in Santa Clara County, California.² The surrender of the exemption and the retrofit of the dam are collectively referred to as the Project. The Commission will use this EIS in its decision-making process in accordance with the National Environmental Policy Act (NEPA). The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.³

As part of the NEPA review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a surrender order. This gathering of public input is referred to as "scoping." By notice issued on August 21, 2024, in Docket No. P-5737-032, the Commission opened a scoping period to solicit comments; this scoping period expires on October 21, 2024; however, Commission staff continues to accept comments after the comment period closes. Staff also held two scoping sessions in Morgan Hill, CA on August 18 and 19, 2024, to take oral scoping comments. Commission staff intends to prepare an EIS that will address the concerns raised during the scoping process and comments received in response to this notice. Therefore, if you previously submitted comments on this

¹ *Santa Clara Valley Irrigation District*, 28 FERC ¶ 62,276 (1984).

² The surrender application was filed February 20, 2024, and supplemented on May 20, May 28, July 2, and July 3, 2024.

³ In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EISX-019-20-000-1727256582. 40 CFR 1502.4(e)(10) (2024).

Project to the Commission during the scoping period, you do not need to file those comments again.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 18, 2024.⁴ Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a Project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular Project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the

Commission. Be sure to reference the Project docket number (P-5737-032) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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.

Summary of the Proposed Surrender

The purpose of and need for this EIS is to analyze the exemptee's proposal to retrofit the Anderson Dam and to surrender the Exemption. The proposed action includes: (1) drawing down the Anderson reservoir to perform a seismic retrofit of the dam which would include removing Anderson Dam in stages and rebuilding the dam and spillway to meet public safety requirements; (2) decommissioning the hydroelectric facility; (3) implementing conservation measures downstream of the dam on Coyote Creek; and (4) surrendering the hydroelectric exemption. Construction to retrofit the dam would take approximately seven years to complete, proposed to begin in 2026. The proposal includes various environmental monitoring plans, site restoration activities, and mitigation measures including improvements to Ogier Ponds and enhancements to the fish passage facilities at the Coyote Percolation Dam located downstream and outside of the Anderson Dam Hydroelectric Project on Coyote Creek. After the surrender, Valley Water would continue to

maintain Anderson Reservoir and the rebuilt dam under specific operational conditions discussed in the surrender application.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the proposed dam retrofit and surrender under the relevant general resource areas:

- geology and soils
- water quantity
- water quality
- aquatic resources
- terrestrial resources
- threatened and endangered species
- recreation
- land use
- aesthetic resources
- socioeconomics
- cultural resources
- air quality, noise, and greenhouse gases; and
- environmental justice.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Some of the expected effects include: (1) erosion of exposed soils during and following construction and associated effects of suspended and/or contaminated sediments on water quality; (2) effects on Valley Water's municipal water system and downstream water availability for groundwater recharge; (3) aquatic habitat connectivity and fish passage, including species listed under the Endangered Species Act; (4) removal of existing recreational facilities and the proposed construction schedule affecting the visitation to recreational sites; (5) construction-related effects on public safety, local roads and traffic, and emergency response times; (6) effectiveness of short and long-term measures to avoid adverse effects on fire management; (7) the visual and audible experience of visitors and residents in the Project vicinity; (8) effects of reservoir drawdown and construction on property values around Anderson Reservoir and Anderson Dam, Morgan Hill; and Santa Clara County; (9) off-site effects to air quality and noise along haul and access routes; and (10) Project-related effects on communities with environmental justice concerns such as construction traffic and the removal of recreational facilities. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

⁴ The Commission's Rules of Practice and Procedure provide that, if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is not open for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2) (2024). The filing deadline is 30 days from issuance of the notice (*i.e.*, November 16, 2024), which falls on a Saturday, thus the filing deadline is the close of business Monday, November 18, 2024.

The EIS will present Commission staff's independent analysis of the issues. The U.S. Army Corps of Engineers (Corps) is a cooperating agency in the preparation of the EIS.⁵ Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary.⁶ (If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

As part of our review in the NEPA document, the Commission will consider a range of reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.⁷ Alternatives that do not meet these requirements will be summarized and dismissed from further consideration in the NEPA document. Staff will also consider the no-action alternative. Currently, we are considering an alternative to the

proposed action that potentially meets the above criteria: the applicants' proposed action with staff modifications.

The alternatives we are considering may be expanded based on the comments we receive, provided they meet the required criteria. With this notice, we ask commenters to identify other potential alternatives for consideration.

Schedule for Environmental Review

On March 21, 2024, the Commission issued its Notice of Application for Surrender of Exemption Accepted for Filing for the Project. This Notice of Intent identifies Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in May 2025, opening a 45-day public comment period. All comments filed will be reviewed by staff and considered in the Commission's final decision on the proceeding.

Issuance of Notice of Availability of the final EIS—November 21, 2025

In accordance with the Council on Environmental Quality's regulations for EISs, agencies are to make schedules for

completing the NEPA process publicly available.⁸ This notice identifies the Commission's anticipated schedule for issuance of the final order for the Project, which serves as the Commission's record of decision. We currently anticipate issuing a final order for the Project no later than:

Issuance of the Surrender Order—
February 19, 2026

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress. After the final EIS is issued, the Commission will make a decision on the proposal.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project.

Agency	Permit or authorization
U.S. Army Corps of Engineers	Section 404 of the Clean Water Act Permit.
California State Water Resources Control Board	Section 401 Water Quality Certification.

Additional Information

Additional information about the Project is available on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the Docket No. P-5737 in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Any questions regarding this notice may be directed to Jennifer Polardino at jennifer.polardino@ferc.gov, or (202) 502-6437.

Dated: October 17, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-24520 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24-508-000]

Rover Pipeline LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Rover-Sunny Farms Receipt and Delivery Meter Station Project

On August 2, 2024, Rover Pipeline LLC (Rover) filed an application in Docket No. CP24-508-000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct facilities at

a new interconnect on Rover's mainline in Hancock County, Ohio. The proposed project is known as the Rover-Sunny Farms Receipt and Delivery Meter Station Project (Project).

On August 16, 2024, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.¹ The EA will be issued for a 30-day comment period.

⁵ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at 40 CFR 1501.8.

⁶ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁷ 40 CFR 1508.1(hh).

⁸ 40 CFR 1501.10(h).

¹ In accordance with the Council on Environmental Quality's regulations, the unique

identification number for documents relating to this environmental review is EAXX-019-20-000-1725459309. 40 CFR 1501.5(c)(4) (2024).

Schedule for Environmental Review

Issuance of EA—January 24, 2025
90-day Federal Authorization Decision
Deadline²—April 24, 2025

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Rover proposes to construct and operate aboveground facilities and new pipeline delivery and receipt point interconnections within and adjacent to Rover's Mainline easement, at approximate milepost 154.54, in Hancock County, Ohio. The project receipt interconnection would receive up to 6,269 dekatherms of natural gas per day and the delivery interconnection and would deliver up to 7,893 dekatherms of natural gas per day.

The Project would consist of the following facilities and activities:

- construction of one delivery meter station with one hot tap, one tap valve, and dual Coriolis Meter Skid;
- construction of one receipt meter station with one hot tap, one tap valve, dual Coriolis Meter Skid, and a gas quality/measurement building;
- 90 feet of interconnect piping;
- installation of associated appurtenant facilities; and
- construction of 0.6 mile of new permanent access road leading from West County Road 18 to the meter station.

Background

On September 16, 2024, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Rover-Sunny Farms Receipt and Delivery Meter Station Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The U.S. Fish and Wildlife Service provided comments on wetlands, wildlife, and endangered species. All substantive comments received will be addressed in the EA.

² The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (i.e., CP24-508), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 16, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-24478 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25-5-000.

Applicants: CPV Maryland, LLC, CPV Shore, LLC.

Description: Joint Application for Authorization under Section 203 of the

Federal Power Act of CPV Maryland, LLC, et al.

Filed Date: 10/11/24.

Accession Number: 20241011-5213.

Comment Date: 5 pm ET 11/1/24.

Docket Numbers: EC25-6-000.

Applicants: Interstate Power and Light Company, Duane Arnold Solar II, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Interstate Power and Light Company, LLC, et al.

Filed Date: 10/11/24.

Accession Number: 20241011-5216.

Comment Date: 5 pm ET 11/1/24.

Docket Numbers: EC25-7-000.

Applicants: Basin Creek Equity Partners, L.L.C.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Basin Creek Equity Partners, L.L.C.

Filed Date: 10/11/24.

Accession Number: 20241011-5219.

Comment Date: 5 pm ET 11/1/24.

Docket Numbers: EC25-8-000.

Applicants: Milford Gen Lead, LLC, Milford Wind Corridor Phase I, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Milford Gen Lead, LLC, et al.

Filed Date: 10/15/24.

Accession Number: 20241015-5551.

Comment Date: 5 pm ET 11/5/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25-10-000.

Applicants: Illinois Winds LLC.

Description: Illinois Winds LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/16/24.

Accession Number: 20241016-5111.

Comment Date: 5 pm ET 11/6/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1123-012; ER10-1119-010.

Applicants: Central Illinois Public Service Company, Union Electric Company.

Description: Notice of Change in Status of Union Electric et al.

Filed Date: 10/11/24.

Accession Number: 20241011-5221.

Comment Date: 5 pm ET 11/1/24.

Docket Numbers: ER10-2783-022; ER10-2960-018; ER10-2969-022; ER21-2423-010; ER21-2424-010; ER22-1662-005.

Applicants: GB II New York LLC, Generation Bridge M&M Holdings, LLC, Generation Bridge Connecticut

Holdings, LLC, Oswego Harbor Power LLC, Astoria Generating Company, L.P., Arthur Kill Power LLC.

Description: Notice of Non-Material Change in Status of Arthur Kill Power LLC et al.

Filed Date: 10/16/24.

Accession Number: 20241016–5098.

Comment Date: 5 pm ET 11/6/24.

Docket Numbers: ER18–1106–004.

Applicants: Kestrel Acquisition, LLC.

Description: Response to 09/13/2024

Updated Triennial Market Power Analysis for Northeast Region of Kestrel Acquisition, LLC.

Filed Date: 10/15/24.

Accession Number: 20241015–5553.

Comment Date: 5 pm ET 11/5/24.

Docket Numbers: ER25–112–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–DEC Provisional Interconnection Service Study Agreement to be effective 10/11/2024.

Filed Date: 10/15/24.

Accession Number: 20241015–5433.

Comment Date: 5 pm ET 11/5/24.

Docket Numbers: ER25–113–000.

Applicants: San Diego Gas & Electric.

Description: Informational Filing of 2024 Formula Rate Annual Update under Appendix X of San Diego Gas & Electric Company.

Filed Date: 10/15/24.

Accession Number: 20241015–5547.

Comment Date: 5 pm ET 11/5/24.

Docket Numbers: ER25–114–000.

Applicants: San Diego Gas & Electric.

Description: Informational Filing of 2024 Formula Rate Annual Update under Appendix XII of San Diego Gas & Electric Company.

Filed Date: 10/15/24.

Accession Number: 20241015–5548.

Comment Date: 5 pm ET 11/5/24.

Docket Numbers: ER25–115–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–10–16 SA 3642 Termination of ATC-Onion River Solar E&P (J1153) to be effective 10/17/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5099.

Comment Date: 5 pm ET 11/6/24.

Docket Numbers: ER25–116–000.

Applicants: CPV Maryland, LLC, CPV Shore, LLC.

Description: Request for Waiver and Expedited Action of CPV Maryland, LLC, et. al.

Filed Date: 10/11/24.

Accession Number: 20241011–5222.

Comment Date: 5 pm ET 11/1/24.

Docket Numbers: ER25–117–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–10–16 Refinements to the rules regarding Continuing Errors to be effective 12/16/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5138.

Comment Date: 5 pm ET 11/6/24.

Docket Numbers: ER25–119–000.

Applicants: Pelican Power LLC.

Description: § 205(d) Rate Filing: Normal filing 2024 Oct to be effective 10/17/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5140.

Comment Date: 5 pm ET 11/6/24.

Docket Numbers: ER25–120–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–10–16 SA 4365 ATC–WPL GIA (J1746) to be effective 10/7/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5151.

Comment Date: 5 pm ET 11/6/24.

Docket Numbers: ER25–121–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): PowerSouth NITSA Amendment (Add Uchee 115 kV DP-Remove Browns Uchee 44 kV DP) to be effective 9/16/2024.

Filed Date: 10/16/24.

Accession Number: 20241016–5169.

Comment Date: 5 pm ET 11/6/24.

Docket Numbers: ER25–122–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: NYSEG–DCEC Attachment C Annual Update to be effective 1/1/2025.

Filed Date: 10/16/24.

Accession Number: 20241016–5204.

Comment Date: 5 pm ET 11/6/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES25–8–000.

Applicants: The Narragansett Electric Company d/b/a Rhode Island Energy.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of The Narragansett Electric Company.

Filed Date: 10/11/24.

Accession Number: 20241011–5215.

Comment Date: 5 pm ET 11/1/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number. 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. eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. 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 16, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–24479 Filed 10–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2528–106]

Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of LLP Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests: Brookfield White Pine Hydro, LLC

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 2528–106.

c. *Dated Filed:* August 20, 2024.

d. *Submitted By:* Brookfield White Pine Hydro, LLC (White Pine Hydro).

e. *Name of Project:* Cataract Hydroelectric Project (Cataract Project or project).

f. *Location:* The project is located on the Saco River in the cities of Saco and Biddeford, in York County, Maine.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:*

Michael Scarzello, Licensing Manager, Brookfield White Pine Hydro LLC, 150 Main Street, Lewiston, Maine 04240; (315) 566-0197; Michael.Scarzello@brookfieldrenewable.com.

i. *FERC Contact:* David Gandy at (202) 502-8560, or email at david.gandy@ferc.gov.

j. *Cooperating agencies:* Federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and the National Marine Fisheries Service under section 305(b) of the Magnuson-Stevens Fishery Management and Conservation Act and implementing regulations at 50 CFR part 600.920. We are also initiating consultation with the Maine State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR part 800.2.

l. With this notice, we are designating White Pine Hydro as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, the Magnuson-Stevens Fishery Management and Conservation Act, and section 106 of the National Historic Preservation Act.

m. White Pine Hydro filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free) or (202) 502-8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

You may register online at <https://ferconline.ferc.gov/FERCOOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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 at OPP@ferc.gov.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Cataract Hydroelectric Project (P-2528-106).

All filings with the Commission must bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any

individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by December 18, 2024.

p. Pursuant to the National Environmental Policy Act (NEPA), Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the "NEPA document") that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or EIS.

Environmental Site Review

White Pine Hydro and Commission staff will hold an environmental site review of the Cataract Project on Tuesday, November 19, 2024, 8:30 a.m. to 11:30 a.m. Eastern Daylight Time (EDT). Participants interested in attending are encouraged to meet 15 minutes early at the Factory Island Parking Lot located at 146 Main Street, Saco, ME 04072 (Google Maps address link). Participants must register in advance to attend by contacting Michael Scarzello at (315) 566-0197, or by email at Michael.Scarzello@brookfieldrenewable.com on or before Tuesday, November 12, 2024.

White Pine Hydro will provide a safety briefing at the beginning of the environmental site review and has indicated that persons attending the environmental site review will need to comply with the following requirements: (1) persons must be 18 years or older; (2) persons should wear sturdy shoes (open-toed shoes/sandals/flip flops/high heels, etc. will not be allowed on the environmental site review); (3) no photography will be allowed on-site; (4) small bags containing personal items for the site visit (*i.e.*, notebooks, maps, water, etc.) will be allowed; (5) no weapons are allowed on-site; (6) no alcohol/drugs are allowed on-site (or persons exhibiting the effects thereof); and (7) no animals (except for service animals) are allowed.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project. The daytime meeting will focus on resource agencies, Native American Tribes, and non-governmental organization (NGO) concerns, while the evening meeting will primarily focus on receiving input from the public. We

invite all interested agencies, Native American Tribes, NGOs, and individuals to attend one or both meetings to assist us in identifying the scope of environmental issues that should be analyzed in the NEPA document. The dates and times of the scoping meetings are listed below.

Daytime Scoping Meeting

Date: Tuesday, November 19, 2024.

Time: 2:00 p.m. to 4:00 p.m.

Location: Ferry Beach Retreat and Conference Center, Zeigler Room.

Address: 5 Boardwalk Drive, Saco, Maine 04072.

Phone: (207) 282-4489.

Evening Scoping Meeting

Date: Tuesday, November 19, 2024.

Time: 6:00 p.m. to 8:00 a.m.

Location: Ferry Beach Retreat and Conference Center, Zeigler Room.

Address: 5 Boardwalk Drive, Saco, Maine 04072.

Phone: (207) 282-4489.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list, as well as White Pine Hydro's distribution list. Copies of SD1 will be available at the scoping meetings or may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. The SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Procedures

Agencies, Native American Tribes, NGOs, and individuals with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document. At the start of each meeting, Commission staff will provide a brief overview of the meeting format and objectives. Individual oral comments will be taken on a one-on-one basis with a court reporter (with Commission staff present). This format is designed to receive the maximum number of oral comments in a convenient way during the timeframe allotted. If you wish to speak, Commission staff will hand out numbers in the order of your arrival. If all individuals who wish to provide comments have had an opportunity to do so, Commission staff may conclude the meeting a half hour earlier than the

scheduled time. Please see appendix A of the SD1 for additional information on the session format and conduct.¹

Scoping comments will be recorded by the court reporter and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system. If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in writing or provided orally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping meeting(s) to answer your questions about the environmental review process. Representatives from White Pine Hydro will also be present to answer project-specific questions.

Dated: October 17, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024-24522 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 382-108]

Southern California Edison Company; Notice of Waiver Period for Water Quality Certification Application

On September 17, 2024, Southern California Edison Company submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the California State Water Resources Control Board, in conjunction with the above captioned project. Pursuant to Section 5.23(b) of the Commission's regulations,¹ we hereby notify the California State Water Resources Control Board of the following:

Date of Receipt of the Certification Request: September 17, 2024.

Reasonable Period of Time to Act on the Certification Request: One year (September 17, 2025).

¹ The appendix referenced in this notice will not appear in the **Federal Register**. Copies of the appendix were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the "eLibrary" link. For assistance, contact FERC at FERCOnlineSupport@ferc.gov, or (866) 208-3676 (toll free) or (202) 502-8659 (TTY).

¹ 18 CFR 5.23(b).

If the California State Water Resources Control Board fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: October 17, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024-24521 Filed 10-22-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12284-01-OLEM]

Forty-Sixth Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket ("Docket") under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. This notice identifies the Federal facilities not previously listed on the Docket and identifies Federal facilities reported to EPA since the last update on April 22, 2024. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include three additions, two deletions, and zero corrections to the Docket since the previous update.

DATES: This list is current as of September 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Electronic versions of the Docket and more information on its implementation can be obtained at <http://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket> by clicking on the link for *Cleanups at Federal Facilities* or by contacting Jonathan Tso [Tso.Jonathan@epa.gov, (202) 564-0410], Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse

Office. Additional information on the Docket and a complete list of Docket sites can be obtained at: <https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket-1>.

SUPPLEMENTARY INFORMATION:

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- 4.0 Process for Compiling the Updated Docket
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- 6.0 Facility NPL Status Reporting, Including NFRAP Status
- 7.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA section 101. Additionally, CERCLA section 103(c) requires facilities that have “stored, treated, or disposed of” hazardous wastes and where there is “known, suspected, or likely releases” of hazardous substances to report their activities to EPA.

CERCLA section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that

the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) to identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public. Previous Docket updates are available at <https://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates>.

This notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at <http://www.epa.gov/fedfac/docket-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final> or obtained by calling the Regional Docket Coordinators listed below. This notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.¹ The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions, see 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: <http://www.epa.gov/fedfacts/federal-facility->

¹ See Section 3.2 for the criteria for being deleted from the Docket.

cleanup-sites-searchable-list or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

- *US EPA Region 1.* Mandy Liao (HBS), 5 Post Office Square, Suite 100, Mail Code: 01–5, Boston, MA 02109–3912, (617) 918–1036.
- *US EPA Region 2.* James Desir, 290 Broadway, New York, NY 10007–1866, (212) 637–4342.
- *US EPA Region 3.* Connor O’Loughlin (3HS12), 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3304.
- *US EPA Region 4.* Emily Jones (9T25), 61 Forsyth St. SW, Atlanta, GA 30303, (404) 562–8334.
- *US EPA Region 5.* David Brauner (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–1526.
- *US EPA Region 6.* Philip Ofosu (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.
- *US EPA Region 7.* Matthew Smith (SUPRERSB), 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7527.
- *US EPA Region 8.* Ryan Dunham (EPR–F), 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.
- *US EPA Region 9.* Ashley Mrzljak (SFD–6–1), 600 Wilshire Boulevard, Suite 940, Los Angeles, CA 90017, (213) 244–1839.
- *US EPA Region 10.* Jeffree Feters, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1583.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

These Federal facilities are being added primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). CERCLA section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL. This notice includes three additions.

3.2 Deletions

There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: a facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.*, 40 CFR 262.44); a facility that was not Federally-owned or operated at the time of the listing; a facility included more than once (*i.e.*, redundant listings); or when multiple facilities are combined under one listing. (See Docket Codes (*Reasons for Deletion of Facilities*) for a more refined list of the criteria EPA uses for deleting sites from the Docket.) Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d). This notice includes two deletions.

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in previous Docket updates. The corrected update is shown directly below, for easy comparison. This notice includes zero corrections.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this notice, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the other Federal Agency (OFA) with the information obtained from the databases identified above to determine which

Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have not, more than once per calendar year, generated more than 1,000 kg of hazardous waste in any single month; (3) Federal facilities that are very small quantity generators (VSQGs) that have never generated more than 100 kg of hazardous waste in any month; (4) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA section 3010; and (5) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether “mixed ownership” mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under section 103(a) of CERCLA, should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at <http://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872>. The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at [https://](https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list)

www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of additional Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.²

The statutory provisions under which a Federal facility is reported are listed in a column titled “Reporting Mechanism.” Applicable mechanisms are listed for each Federal facility: for example, Sections 3005, 3010, 3016, 103(c), or Other. “Other” has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan at 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) a report submitted in accordance with section 103(a) of CERCLA, *i.e.*, reportable quantities codified at 40 CFR 302; (2) a report submitted to EPA in accordance with section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or State permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; (7) a report submitted in accordance with section 311(b)(5) of the Clean Water Act;

² Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at <https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list> or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of the date of this notice, the total number of Federal facilities that appear on the Docket is 2,395.

Gregory Gervais,

Director, Federal Facilities Restoration and Reuse Office, Office of Land and Emergency Management.

7.1 Docket Codes/Reasons for Deletion of Facilities

- **Code 1.** Small-Quantity Generator and Very Small Quantity Generator. Show citation box.

- **Code 2.** Never Federally Owned and/or Operated.
- **Code 3.** Formerly Federally Owned and/or Operated but not at time of listing.
- **Code 4.** No Hazardous Waste Generated.
- **Code 5.** (This code is no longer used.)
- **Code 6.** Redundant Listing/Site on Facility.
- **Code 7.** Combining Sites Into One Facility/Entries Combined.
- **Code 8.** Does Not Fit Facility Definition.

7.2 Docket Codes/Reasons for Addition of Facilities

- **Code 15.** Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.
- **Code 16.** One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.
- **Code 16A.** NPL site that is part of a Facility already listed on the Docket.
- **Code 17.** New Information Obtained Showing That Facility Should Be Included.

- **Code 18.** Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.
- **Code 19.** Sites Were Combined Into One Facility.

- **Code 19A.** New Currently Federally Owned and/or Operated Facility Site.

7.3 Docket Codes/Types of Corrections of Information About Facilities

- **Code 20.** Reporting Provisions Change.
- **Code 20A.** Typo Correction/Name Change/Address Change.
- **Code 21.** Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)
- **Code 22.** Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously performed PA, which is subject to approval by EPA.)
- **Code 24.** Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #46—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
Yellowstone National Park—Mammoth Bone Yard.	168 P.O. Box	Yellowstone National Park.	WY	82190	Interior	RCRA 3010	17	Update #46.
US Army COE Lower Monumental Dam	Devils Canyon Rd. Snake River.	Kahlotus	WA	99335	Corps of Engineers, Civil.	RCRA 3010	17	Update #46.
US CG Group Port Angeles	Marine Dr. Ediz Hook Rd	Port Angeles	WA	98362	Homeland Security.	RCRA 3010	17	Update #46.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #46—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
Nyanza Chemical Waste Dump	Megunko Rd	Ashland	MA	01721	EPA	RCRA 3010	2	Update #46.
Region 7 Science & Technology Center	300 Minnesota Ave	Kansas City ...	KS	66101	EPA	RCRA 3010	1	Update #46.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #46—CORRECTIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date

[FR Doc. 2024–23794 Filed 10–22–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0374; FRL–12220–02–OCSPP]

Dimethyl Tetrachloroterephthalate (DCPA); Final Cancellation Order for Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is hereby announcing EPA’s order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This action cancels the last remaining products containing Dimethyl Tetrachloroterephthalate (DCPA) in the U.S.

DATES: These cancellations are applicable October 23, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2011-0374, is available through <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: James Douglass, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-2343; email address: douglass.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all

the specific entities that may be affected by this action.

B. What action is the Agency taking?

This cancellation order follows a notice of receipt in the **Federal Register** on August 29, 2024 (89 FR 70181) (FRL-12220-01-OCSP) and opportunity for public comment on the requests from the registrant listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In that document, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew its requests. The Agency received three comments by the end of the comment period, none of which necessitate further review of the registrant's requests to cancel these product registrations. Accordingly, EPA hereby issues this cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only as described below in Unit IV.

C. What is EPA's authority for taking this action?

FIFRA section 6(f)(1) (7 U.S.C. 136d(f)(1)) provides that a registrant of

a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request.

II. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA issues this cancellation order for the products in Table 1. The effective date of the cancellations that are the subject of this order is October 23, 2024. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of this unit in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit IV. would be a violation of FIFRA.

Table 1 of this unit lists the product cancellations, as requested by registrant, in sequence by registration number (or company number and FIFRA section 24(c) number).

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
5481-495	5481	Technical Chlorthal Dimethyl	Dimethyl tetrachloroterephthalate (DCPA).
5481-487	5481	Dacthal Flowable Herbicide	DCPA.
WI050002	5481	Dacthal W-75 Herbicide	DCPA.

Table 2 of this unit includes the name and address of record for the DCPA registrant of the products in Table 1 of

this unit. The EPA Company No. corresponds to the first part of the EPA

registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANT OF THE VOLUNTARILY CANCELLED PRODUCTS

EPA Company No.	Company name and address
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660.

III. Summary of Public Comments Received and Agency Response to Comments

In its comment, AMVAC generally disagreed with EPA's characterization of events made in various public statements extending from its FIFRA section 3(c)(2)(b) suspension of the DCPA technical product registration through its FIFRA section 6(c)(3) emergency order of suspension. Since the registrant did not withdraw its requests to cancel its registrations in its

public comment, EPA has no further response at this time.

Earthjustice also submitted a comment on behalf of itself and Alianza Nacional de Campesinas, California Rural Legal Assistance Foundation, Center for Food Safety, and Pesticide Action Network North America. In its comment, Earthjustice called on EPA to exercise adequate oversight to ensure that AMVAC's takeback and disposal program does not put communities in harm's way and is maximally effective.

EPA remains in regular contact with AMVAC regarding its return program and will correspond with state lead agencies as needed to ensure an effective product return occurs.

Finally, a comment was received from a private citizen which provided some resources pertaining to DCPA and pesticide regulation more generally for EPA's consideration. EPA thanks this commenter for the information and their time.

IV. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrant, AMVAC, is prohibited from selling, distributing, or using the pesticides identified in Table 1 of Unit II., except for proper disposal or for export consistent with FIFRA section 17.

Effective on the date listed below, persons other than the registrant are also prohibited from selling, distributing, or using existing stocks of these products except for returning existing stocks to AMVAC, properly disposing of existing stocks and exporting existing stocks consistent with FIFRA section 17.

Since the Agency's August 6, 2024, issuance of an Emergency Order of Suspension in the **Federal Register** on August 7, 2024 (89 FR 64445) (FRL-12147-01-OCSP), AMVAC has been implementing a voluntary return program of products containing DCPA. AMVAC has directed end users to return product to the retail establishment where the product was originally purchased. AMVAC is collecting existing stocks from distributors and retailers and working to ensure the proper disposal of any collected product.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 17, 2024.

Jean Anne Overstreet,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2023-0456; FRL-11424-02-OCSP]

Final Revisions to the National Lead Laboratory Accreditation Program (NLLAP); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of the document titled "Laboratory Quality Standards for Recognition (LQSR 4.0)" under the National Lead Laboratory Accreditation

Program (NLLAP), which is a revision to the EPA document titled "Laboratory Quality System Requirements (LQSR) Revision 3.0," dated November 5, 2007. The revised LQSR 4.0 updates and streamlines the guidance by referencing existing laboratory standards already in practice by NLLAP participating laboratories and directly related to laboratory lead analysis; and includes updates to the test and sampling method standards to better complement EPA's lead-based paint program activities.

DATES: LQSR 4.0 is effective October 23, 2024. However, in order to be recognized by the NLLAP, laboratories and accreditation organizations that currently administer the NLLAP can comply with the standards of LQSR 3.0 or LQSR 4.0 until December 22, 2025. After December 22, 2025, all NLLAP-recognized organizations must implement and comply with the standards of LQSR 4.0 in order to maintain participation in NLLAP.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2023-0456, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kathleen Ferry, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; telephone number: (202) 564-2214; email address: ferry.kathleen@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you perform or may perform testing under the Agency's regulations regarding lead or otherwise interact with such testing programs. Specifically, entities potentially affected by these revisions are Fixed-Site, Mobile, and Field Sampling and Measurement Organizations (FSMOs) that perform lead testing. Analytical testing laboratories currently recognized by the NLLAP and accreditation organizations that currently administer

the NLLAP or other organizations that might seek a Memorandum of Understanding (MOU) with the Agency to become an accreditation organization could be affected by these revisions. In addition, certified inspectors, certified risk assessors, developers, manufacturers, distributors of equipment and supplies used by FSMOs testing lead might also be affected by these revisions; and EPA-authorized state and tribal lead-based paint training and certification programs may also be affected by these revisions.

Other entities potentially affected by changes to the NLLAP for lead testing are the owners and managers of target housing and child-occupied facilities, as well as realtors, lessees, and residents, who ultimately pay for the testing services and stand to benefit by obtaining lead test results quicker.

Since other entities may also be interested, the Agency has not attempted to describe all of the specific entities that may be affected by this notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is finalizing the proposed revisions to the LQSR, now named "Laboratory Quality Standards for Recognition" (LQSR 4.0), with certain changes prompted by public comments.

C. Reasonable Availability to the Public.

You may access the International Organization for Standardization and International Electrochemical Commission (ISO/IEC) Standard 17025: 2017 (E) "General requirements for the competence of testing and calibration laboratories" through the American National Standards Institute (ANSI) Incorporation by Reference (IBR) reading room at <https://ibr.ansi.org/>, as well as the American Society for Testing and Materials (ASTM) standard E1583-21a "Standard Practice for Evaluating Laboratories Engaged in Determination of Lead in Paint, Dust, Airborne Particulates, and Soil Taken from and Around Buildings and Related Structures" at astm.org. These standards were incorporated into the LQSR 4.0 and referenced in this document.

II. Background

EPA is identified by Congress as the federal agency responsible for establishing an accreditation program for laboratories participating in the analysis of lead in paint, soil and dust samples as a part of a national residential lead-based paint abatement

and control program. In response to this federal mandate, the Office of Pollution Prevention and Toxics (OPPT) established the NLLAP which recognizes laboratories that have demonstrated the ability to accurately analyze for lead in paint, dust, and soil samples. EPA also publishes the LQSR which sets the minimum lab standards under Toxic Substances Control Act (TSCA) section 405(b) for laboratory analysis of lead in paint films, soil, and dust.

There are two basic components to the NLLAP. The first component is a laboratory proficiency testing program (the Environmental Laboratory Proficiency Analytical Testing (ELPAT) Program) administered by the American Industrial Hygiene Association (AIHA) in conjunction with EPA's NLLAP. AIHA sends out ELPAT proficiency testing samples on a quarterly basis (four test rounds per year). AIHA assimilates the test results for each test round and evaluates the laboratories' performance on a statistical basis. The second component of the NLLAP is a system audit to be conducted by a laboratory accrediting organization recognized by EPA. EPA currently recognizes the organizations as accrediting organizations through a memorandum of agreement (<https://www.epa.gov/lead/national-lead-laboratory-accreditation-program-nllap>). Once a laboratory successfully meets the requirements of the ELPAT Program and passes an NLLAP system audit, the laboratory is recognized by EPA under the NLLAP.

In 1993, EPA issued its first version of the LQSR, which outlined minimum requirements for NLLAP recognized laboratories. An organization requesting NLLAP recognition shall be a laboratory capable of performing sampling and/or lead testing. A laboratory shall have distinct staffing, instrumentation, sampling, and test methods, as appropriate, and depending upon the type, a laboratory may have multiple physical facilities and may use field test kits. The last revision of the LQSR was published in 2007, LQSR 3.0, to attain recognition under the NLLAP as a lead-testing laboratory.

III. EPA Response to Public Comments

EPA requested comment on the revisions to LQSR 3.0 (88 FR 78355, November 15, 2023 (FRL-11424-01-OCSP)). A docket was created and used to receive public comments on EPA's proposed revisions through December 15, 2023 (Docket Number EPA-HQ-OPPT-2023-0456). EPA received a total of three comments, two from NLLAP accrediting bodies and one

from an individual. The two accrediting bodies commented (EPA-HQ-OPPT-2023-0456-0006, EPA-HQ-OPPT-2023-0456-0005) in general support of EPA's updates to the LQSR (*i.e.*, LQSR 4.0), including the alignment to the current version of ISO/IEC 17025 as well as the ASTM E1583-21a Standard.

A. Reporting Limit Issue

One commenter (EPA-HQ-OPPT-2023-0456-0005) expressed concern over the "reporting limit issue" created by the proposed dust-lead hazard standard (88 FR 50444) and encouraged EPA to amend the LQSR to allow laboratories to have reporting limits above their method detection limit (MDL) without requiring the MDL multiplier. In addition, the commenter (EPA-HQ-OPPT-2023-0456-0005) recommended that the amended LQSR not require that the laboratories have a reporting limit of at least half of the lowest regulatory level, stating this would be interpreted to be 50% of zero. EPA disagrees that 50% of zero would have been the reporting limit under the dust-lead proposal. As EPA explained in its dust-lead proposed rule (88 FR 50444), if the rule were to be finalized as proposed, the dust-lead clearance levels would become the "action level" as described in LQSR 4.0, not the dust-lead hazard standards which EPA had proposed to be "any reportable level as analyzed by a laboratory recognized by EPA's NLLAP". Learn more about EPA's efforts to lower the dust-lead hazard standards and post-abatement dust-lead clearance levels under TSCA sections 402 and 403: <https://www.epa.gov/lead/hazard-standards-and-clearance-levels-lead-paint-dust-and-soil-tscasections-402-and-403>. However, in response to concerns raised regarding the impacts of lower clearance levels and the reporting limit on laboratories, EPA has modified LQSR 4.0's Section 5.3 Test and Sampling Methods so that NLLAP-recognized laboratories that analyze dust wipe samples for lead must show that they can achieve a quantitation limit "equal to or less than . . . 80% of the lowest action level (*i.e.*, regulatory limit) for dust wipe samples"; this is a shift from the draft LQSR 4.0 where it was 50%. To be clear, under the current dust-lead regulations for floors (*i.e.*, 10 micrograms per square foot ($\mu\text{g}/\text{ft}^2$)), the quantitation limit under the final LQSR 4.0 would be 8 $\mu\text{g}/\text{ft}^2$. For the two options for clearance or action levels proposed in the dust-lead proposal, the corresponding quantitation limit under the final LQSR 4.0 would be 4 $\mu\text{g}/\text{ft}^2$ (for an action level of 5 $\mu\text{g}/\text{ft}^2$ for floors) or 2.4 $\mu\text{g}/\text{ft}^2$ (for an action level of 3 $\mu\text{g}/\text{ft}^2$ for floors) when the compliance date

arrives for any such updated value. EPA expects its upcoming final dust-lead rule to also clarify this point upon finalizing its reconsideration of the action levels. In addition, EPA is finalizing in the LQSR 4.0 that the quantitation limit must be "at least 1.6 times but no greater than 10 times the method detection limit," whereas EPA proposed "at least 2 times but no greater than 10" in the draft LQSR 4.0.

B. Effective Date

One commenter (EPA-HQ-OPPT-2023-0456-0005) disagreed with the proposed effective date (*i.e.*, one year after the publication of the **Federal Register** notice) and stated that more time would be needed to update Environmental Lead Laboratory Accreditation Program (ELLAP) accreditation policies and train its site assessors on how to conduct assessments, especially using the new ASTM Standard. This commenter (EPA-HQ-OPPT-2023-0456-0005) also cited resource concerns and the need for adequate time to update technologies. First, EPA would like to clarify that the one-year compliance date extension was proposed for EPA's rulemaking titled, "Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels" (88 FR 50444, August 1, 2023 (FRL-8524-01-OCSP)). Interested parties should review EPA's docket for that rulemaking to learn more about the compliance deadlines associated with that rulemaking (EPA-HQ-OPPT-2023-0231).

EPA has considered the comments on both the draft LQSR 4.0 and the proposed dust-lead rulemaking in impacting NLLAP laboratories, as well as conducted outreach to obtain a better understanding of laboratories' capability and capacity for dust wipe testing. For the final LQSR 4.0, EPA is finalizing an effective date of 425 days after the date of publication of the document announcing the final LQSR 4.0 in the **Federal Register**. This effective date is intended to provide a reasonable amount of time for NLLAP-recognized laboratories to take actions to meet the standards in the final LQSR 4 so they can continue providing dust wipe testing services to the regulated community without any significant disruption in service. In the meantime, in order to be recognized by the NLLAP, laboratories and accreditation organizations that currently administer the NLLAP may comply with the standards of LQSR 3.0 or LQSR 4.0.

C. Sampling Criteria

One accrediting body (EPA-HQ-OPPT-2023-0456-0006) suggested that the EPA consider adopting the criteria for Field Sampling and Measurement Organizations (FSMOs) and the oversight of FSMOs from the NELAC Institute (TNI) Field Sampling and Measurement Organization Sector “Volume 1 General Requirements for Field Sampling and Measurement Organizations” and “Volume 2 General Requirements for Accreditation Bodies Accrediting Field Sampling and Measurement Organizations” as a way to reduce uncertainty of results due to the quality of the samples. EPA accepted this suggestion by adding a recommended reference to NELAC Institute (TNI) Field Sampling and Measurement Organization Standards “Volume 1: General Requirements for Field Sampling and Measurement Organizations”. EPA did not include reference to “Volume 2: General Requirements for Accreditation Bodies Accrediting Field Sampling and Measurement Organizations” because EPA determined that volume was out of scope for the LQSR 4.0 due to its focus on accreditation bodies instead of laboratories.

In reference to clearance testing on floors (as discussed in 40 CFR 745.227(e)), one commenter (EPA-HQ-OPPT-2023-0456-0003) recommended compositing of four wipe samples from each floor to assure that clearance failure, if present, is determined. The commenter stated that clearance should be performed in conformance with Practices E2271/E2271M and E3074/E3074M with method quantitation limits (MQLs) determined for the resulting composited wipe samples. While HUD and EPA regulations allow composite sampling, HUD’s “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” generally do not encourage composite sampling and most laboratories discourage their clients from submitting composite dust-wipe samples. EPA is not finalizing amendments to the LQSR 4.0 which would compel risk assessors to take composite samples, including how either single surface or composite samples are collected, analyzed, or interpreted. This same commenter (EPA-HQ-OPPT-2023-0456-0003) requested EPA modify the Glossary term for “Composite sample” from “A sample composed as a result of collection of more than one sample of the same medium (e.g., dust) from the same type of surface (e.g., floor, interior window sill, or window trough) so that multiple samples can be analyzed as a

single sample” to “the single sample resulting from the combination of individual samples collected from different sections of the same area.” For reasons previously mentioned, EPA is not finalizing this recommended change.

This same commenter (EPA-HQ-OPPT-2023-0456-0003) provided edits to section 5.6.1.4 Sample Custody Procedures of the draft LQSR 4.0, which would change the chain of custody protocols from “strongly recommended” to “must conform to ASTM D4840,” stating handling needs to be “beyond doubt.” EPA reviewed ASTM D4840 and has adapted language from it to modify this section to state that chain of custody protocols shall “provide sufficient assurances, both legal and technical, that assertions made about a sample and its measurable characteristics can be supported to an acceptable level of certainty.”

Lastly, two commenters (EPA-HQ-OPPT-2023-0456-0003, EPA-HQ-OPPT-2023-0456-0005) suggested EPA define ELPAT as “ELPAT: Environmental Lead Proficiency Analytical Testing (ELPAT) Program operated by AIHA Proficiency Analytical Testing Programs (AIHA PATP).” Successful participation in this proficiency testing program on a quarterly basis is required for all laboratories recognized by EPA in the NLLAP.” EPA accepted this suggested edit.

D. Referencing Standards

The National Technology Transfer and Advancement Act (NTTAA) requires federal agencies to use technical standards already developed or adopted by voluntary consensus standards bodies if compliance would not be inconsistent with applicable law or otherwise impracticable. The current LQSR guidance (LQSR 3.0), refers to a now outdated 2005 version of a laboratory quality standard, International Organization for Standardization and International Electrochemical Commission (ISO/IEC) Standard 17025: 2005 (E) “General requirements for the competence of testing and calibration laboratories”. In addition, there are other laboratory standards in LQSR 3.0 that are already in practice by NLLAP participating laboratories and directly related to laboratory lead analysis, making parts of the elements in LQSR 3.0 duplicative. Therefore, EPA proposed to streamline the LQSR by conforming and referencing the updated ISO 17025: 2017 (E) and ASTM E1583-21a. OPPT has reviewed the updated laboratory standards and identified any gaps or

areas where additional clarification or criteria are needed between ISO 17025: 2017 and ASTM E1583-21a and the proposed LQSR 4.0. These additional clarifications or criteria are included throughout the proposed draft.

One commenter (EPA-HQ-OPPT-2023-0456-0003) suggested that LQSR 4.0 simply state the requirement that the laboratory be accredited as conforming to ISO/IEC 17025 and ASTM E1583 as the main prerequisite to recognition. The commenter notes that EPA refers to the standards as “ISO/IEC 17025:2017(E)” and recommends instead “ISO/IEC 17025” for simplicity’s sake. Similarly, the reference to the current ASTM Standard may show the fact that it is an ASTM Standard (*i.e.*, ASTM E1583) or, if previously discussed, show as the alpha-numeric designator of the Standard (*i.e.*, E1583). EPA thanks the commenter for their suggestions and has made these edits in the final LQSR 4.0.

This commenter (EPA-HQ-OPPT-2023-0456-0003) also provided a number of editorial comments to alleviate confusion over which sections of the standards do not or may not apply. The commenter (EPA-HQ-OPPT-2023-0456-0003) recommended that EPA remove references to specific sections of ISO/IEC 17025 or ASTM E1583 stating that both ISO/IEC 17025 and E1583 are normative references, and both require conformance, and that further citation to specific sections could falsely seem to suggest that other sections of the standards do not or may not apply. EPA accepted those edits throughout the final LQSR 4.0. The commenter (EPA-HQ-OPPT-2023-0456-0003) also provided a number of other relevant standards for EPA to consider for future actions. EPA appreciates the references and will consider these in future actions affecting NLLAP laboratories.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 18, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2024-0057; FRL-11683-09-OCSPP]

Certain New Chemicals; Receipt and Status Information for September 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 9/1/2024 to 9/30/2024.

DATES: Comments identified by the specific case number provided in this document must be received on or before November 22, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2024-0057, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: rahai.jim@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Executive Summary***A. What action is the Agency taking?*

This document provides the receipt and status reports for the period from 9/1/2024 to 9/30/2024. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance

subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <https://www.epa.gov/chemicals-under-tsca>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the

section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA’s determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notice>. This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the

manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter “A” (*e.g.*, P-18-1234A). The version column designates submissions in sequence as “1”, “2”, “3”, etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs APPROVED FROM 9/1/2024 TO 9/30/2024

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-20-0174A	7	08/29/2024	P2 Science, Inc ...	(S) For use in consumer products, as well as direct addition to consumer products. Specific functions would be as solubilizer, rheology modifier and fragrance oil. The candidate substance is expected to be used as an ingredient in the formulation of a broad range of consumer products including but not limited to laundry detergents, cleaners, fabric softeners, air fresheners, etc. In addition, it is anticipated to be added as an ingredient to fragrances by fragrance manufacturers, who will then supply these fragrances to downstream consumer product companies to use in the manufacture of their goods. The anticipated range of use levels is 0.1–5.0%.	(S) 6-Octen-1-ol, 3,7-dimethyl-, homopolymer, monoacetate.

TABLE I—PMN/SNUN/MCANS APPROVED FROM 9/1/2024 TO 9/30/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-20-0184A	5	08/29/2024	P2 Science, Inc ...	(S) For use in fragrances for consumer products, as well as direct addition to consumer products. Specific functions would be as solubilizer, rheology modifier and fragrance oil The candidate substance is expected to be used as an ingredient in the formulation of a broad range of consumer products including but not limited to laundry detergents, cleaners, fabric softeners, air fresheners, etc. In addition, it is anticipated to be added as an ingredient to fragrances by fragrance manufacturers, who will then supply these fragrances to downstream consumer product companies to use in the manufacture of their goods. The anticipated range of typical use levels is 0.1–5.0%.	(S) 6-Octen-1-ol, 3,7-dimethyl-, homopolymer.
P-22-0158A	4	09/06/2024	Aqdot	(G) Additive used in consumer, commercial, and industrial applications.	(S) 1H,4H,14H,17H-2,16:3,15-Dimethano-5H,6H,7H,8H,9H,10H,11H,12H,13H,18H,19H,20H,21H,22H,23H,24H,25H,26H-2,3,4a,5a,6a,7a,8a,9a,10a,11a,12a,13a,15,16,17a,18a,19a,20a,21a,22a,23a,24a,25a,26a-*tetracosazabispentaleno[1''',6''':5'',6'',7'']cycloocta[1'',2'',3'':3',4']pentaleno[1',6':5,6,7]cycloocta[1,2,3-gh:1',2',3'-g'h']cycloocta[1,2,3-cd:5,6,7-c'd']dipentalene-1,4,6,8,10,12,14,17,19,21,23,25-dodecone, dodecahydro-, stereoisomer;2,18:3,17-Dimethano-2,3,4a,5a,6a,7a,8a,9a,10a,11a,12a,13a,14a,15a,17,18,19a,20a,21a,22a,23a,24a,25a,26a,27a,28a,29a,30a,octacosazabispentaleno[1''',6''':5''',6''',7''']cycloocta[1''',2''',3''':3''',4''']pentaleno[1''',6''':5'',6'',7'']cycloocta[1'',2'',3'':3',4']pentaleno[1',6':5,6,7]cycloocta[1,2,3-cd:1',2',3'-gh]pentalene-1,4,6,8,10,12,14,16,19,21,23,25,27,29-tetradecone, tetradecahydro-, stereoisomer;2,20:3,19-Dimethano-2,3,4a,5a,6a,7a,8a,9a,10a,11a,12a,13a,14a,15a,16a,17a,19,20,21a,22a,23a,24a,25a,26a,27a,28a,29a,30a,31a,32a,33a,34adotriacontazabispentaleno[1''',6''':5''',6''',7''']cycloocta[1''',2''',3''':3''',4''']pentaleno[1''',6''':5'',6'',7'']cycloocta[1'',2'',3'':3',4']pentaleno[1',6':5,6,7]cycloocta[1,2,3-gh:1',2',3'-g'h']cycloocta[1,2,3-cd:5,6,7-c'd']dipentalene-1,4,6,8,10,12,14,16,18,21,23,25,27,29,31,33-hexadecone, hexadecahydro-, stereoisomer.
P-23-0117A	6	09/04/2024	Braven Environmental, LLC.	(S) Feedstock blended into fuels and fuel blendstocks; Chemical feedstock.	(G) Waste plastics, pyrolyzed, condensate.
P-23-0138A	2	08/27/2024	CBI	(S) Photoinitiator: Amine Synergists or Amine Acrylates like OPV and industrial coatings (pigmented systems like offset, flexo and inkjets) No domestic production as this product is for import only.	(S) Benzoic acid, 2-([1,1'-biphenyl]-4-ylcarbonyl)-, 2-ethylhexyl ester.
P-23-0149A	4	09/20/2024	CBI	(S) This material is a catalyst	(G) Dialkyltin Fatty acids ester.
P-23-0189A	2	09/06/2024	CBI	(G) Component in polymers ...	(G) Dimethanocarboxypolycycle, alkyl-polyhydro-.
P-23-0189A	3	09/10/2024	CBI	(G) Component in polymers ...	(G) Dimethanocarboxypolycycle, alkyl-polyhydro-.
P-24-0086A	2	09/24/2024	HydroGraph	(S) Thermosets a. Automotive parts: Used to manufacture various automotive components, such as brake pads, engine mounts, electrical connectors, and interior trim, due to their excellent heat resistance and mechanical properties.	(S) few layer, non-functionalized, turbostratic graphene in a powdered form of aggregated nano-platelets from carbon-rich gas explosion synthesis.

TABLE I—PMN/SNUN/MCANS APPROVED FROM 9/1/2024 TO 9/30/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-24-0087A	2	09/24/2024	HydroGraph	(S) Alternative energy: Wind blades and solar panels, Construction materials including concrete, asphalt, and other engineered materials.	(S) few layer, non-functionalized, turbostratic graphene in a powdered form of aggregated nano-platelets from carbon-rich gas explosion synthesis.
P-24-0104A	6	09/12/2024	CBI	(G) Plastic additive	(G) carbomonocycle alkylamide, 3,5-bis(1,1-dialkyl)-N-[2,5-dioxo-3-(polyalkylene)-1- heteromonocyclic]- 4-hydroxy-.
P-24-0158A	3	09/03/2024	CBI	(G) Resin for packaging, battery technology.	(G) Polyhydroxyalkanoate.
P-24-0186A	3	09/04/2024	SGP Ventures, Inc.	(S) Epoxy used to fill holes in printed circuit boards.	(S) 2-Oxiranemethanamine, N-[2-methyl-4-(2-oxiranylmethoxy)phenyl]-N-(2-oxiranylmethyl)-.
P-24-0192A	4	09/23/2024	Bruhl Chemical Trade, Inc.	(S) Paints, coatings and inks ..	(S) 4-Hydroxybenzophenone, ethoxylated, esters with acrylic acid.
P-24-0192A	5	09/26/2024	Bruhl Chemical Trade, Inc.	(S) Paints, coatings and inks ..	(S) poly(oxy-1,2-ethanediyl), alpha-(1-oxo2-propen-1-yl)-omega-(4-benzoylphenoxy)-.
P-24-0193	1	09/13/2024	CBI	(G) Dispersive Use	(G) Perfluorosulfonic acid polymer, with perfluorodioxolane.
P-24-0195	1	09/26/2024	CBI	(G) Heat transfer fluid, Dielectric testing.	(G) Trimers of hexafluoropropene.
SN-22-0006A	4	08/30/2024	MacDermid Enthone, Inc.	(G) Catalyst (contained use) ..	(S) Tungstate (W12(OH)2O386-), sodium (1:6).
SN-22-0006A	5	09/16/2024	MacDermid Enthone, Inc.	(G) Catalyst (contained use) ..	(S) Tungstate (W12(OH)2O386-), sodium (1:6).
SN-22-0007A	8	09/04/2024	Braven Environmental, LLC.	(G) Product of Pyrolysis manufacturing.	(S) Waste plastics, pyrolyzed, C5-12 fraction.
SN-22-0008A	9	09/04/2024	Braven Environmental, LLC.	(G) Product of Pyrolysis Manufacturing.	(S) Waste plastics, pyrolyzed, C20-55 fraction.
SN-22-0009A	8	09/04/2024	Braven Environmental, LLC.	(G) Product of Pyrolysis Manufacturing.	(S) Waste plastics, pyrolyzed, C9-20 fraction.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED FROM 9/1/2024 TO 9/30/2024

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P-18-0014A	09/09/2024	04/22/2024	Revised specific chemical name.	(G) Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1).
P-19-0095A	09/12/2024	03/26/2024	Revised generic chemical name.	(G) Alkane, mixed with carbon dioxide and oxygen, fermented, hydroxyalkanoic acid homopolymer.
P-19-0173	09/05/2024	09/05/2024	N	(S) Benzoic acid, 2,4-dichloro-5-fluoro-.
P-19-0175	09/06/2024	09/06/2024	N	(S) Benzoic acid, 5-chloro-2-methyl-.
P-19-0182	09/05/2024	09/05/2024	N	(S) Benzoic acid, 2,4-dichloro-5-fluoro-, sodium salt (1:1).
P-19-0184	09/06/2024	09/06/2024	N	(S) Benzoic acid, 5-chloro-2-methyl-, sodium salt (1:1).
P-20-0122A	09/09/2024	04/22/2024	Revised generic chemical name.	(G) Heterocyclic onium compound with fluorosubstitutedalkyl 2-methyl-2-propenoate (1:1), polymer with acenaphthylene, 4-ethenyl-alpha, alpha-dimethylbenzenemethanol and 4-ethenylphenyl acetate, hydrolyzed.
P-21-0002	09/18/2024	12/20/2022	N	(G) Octadecanoic acid, 12-hydroxy-, polymer with aziridine, 2-oxepanone and tetrahydro-2H-pyran-2-one, reaction products with disubstituted heteropolycycle.
P-21-0034	09/26/2024	09/14/2024	N	(G) Polymer modified multifunctional silane.
P-22-0137A	09/17/2024	09/10/2024	N	(G) Alkyl dialkylamine.
P-22-0138	09/17/2024	09/16/2024	N	(G) Tetraalkylammonium chloride.
P-23-0032	09/26/2024	09/12/2024	N	(S) 1, 3-propanediol, polymer with 1, 3-diisocyanatomethylbenzene.
P-23-0102	09/18/2024	09/01/2024	N	(G) Glycerides from fermentation of genetically modified microorganism.
P-23-0134	09/12/2024	08/14/2024	N	(S) Poly[oxy(methyl-1,2-ethanediyl)],alpha-hydro-omega-{[2-[(1-chloro-9-oxo-9H-thioxanthen-4-yl)oxy]acetyl]oxy}-, ether with 2,2-bis(hydroxymethyl)-1,3-propanediol (4:1).
P-23-0142	09/27/2024	09/26/2024	N	(G) Alkenal, 9-(acetyloxy)-, (E)-.
P-23-0160	09/04/2024	08/26/2024	N	(G) Alkenoyl chloride, 3-methyl-.
P-23-0170	09/04/2024	08/19/2024	N	(G) Ethanaminium, 2-[3-(2,5-dioxo-1-heteromonocyclic) propoxy]-N,N,N-trimethyl-, monopolysisobutylene derivs., Me ethanedioate.
P-24-0005	09/12/2024	08/26/2024	N	(S) [[1,1'-biphenyl]-4,4'-diol, reaction products with 4-cyclohexylphenol and 2,4,6-trichloro-1,3,5-triazine.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI

claim) on the test information that has been received during this time period: The EPA case number assigned to the

test information; the date the test information was received by EPA, the

type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 9/1/2024 TO 9/30/2024

Case No.	Received date	Type of test information	Chemical substance
P-14-0712	09/26/2024	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing.	(S) Waste plastics, pyrolyzed, C5–55 fraction.
P-16-0543	09/24/2024	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P-21-0180	09/18/2024	Determination of Water Solubility Report	(G) Sulfonium, (halocarbomonocycle)diphenyl-, salt with 1-heterosubstituted-2-methylalkyl trihalobenzoate (1:1).
P-22-0086	09/26/2024	Supplementary Test Data Report	(G) Phenoxathiinium, 10-phenyl-, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri- carbopolycycle, hetero-acid)benzenesulfonate (1:1).
P-22-0179	09/18/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105).	(G) Sulfonium, (alkylsubstitutedphenyl)diphenyl-, salt with 1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkyl trisubstitutedbenzoate (1:1).
P-22-0180	09/18/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105).	(G) Dibenzothiophenium, 5-phenyl-, 4-[1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkoxy]-4-oxoalkyl trisubstitutedbenzoate (1:1).
P-24-0097	09/18/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105).	(G) Sulfonium, tris(4-fluorophenyl)-, (substitutedphenoxy)alkyl substitutedbenzoate (1:1).

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 17, 2024.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024-24503 Filed 10-22-24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0669; FRL-9116-06-OAR]

Phasedown of Hydrofluorocarbons: Notice of 2025 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Actions Establishing Administrative Consequences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has issued calendar year 2025 allowances for the production and consumption of hydrofluorocarbons in accordance with the Agency's regulations. This issuance of allowances is undertaken pursuant to the American Innovation and Manufacturing Act, which directs the Environmental Protection Agency by October 1 of each calendar year to determine the quantity

of production and consumption allowances for the following calendar year. In this notice, the Agency is also providing notice of separate Agency actions previously taken to establish administrative consequences for specific entities. These previously finalized actions withheld, retired, or revoked the identified entities' newly-issued calendar year 2025 allowances in accordance with the administrative consequence regulatory provisions.

FOR FURTHER INFORMATION CONTACT:

Andy Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202-564-6658; email address: chang.andy@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION:

Subsection (e)(2)(D)(i) of the American Innovation and Manufacturing Act of 2020 (AIM Act) directs the Environmental Protection Agency (EPA) to determine, by October 1 of each calendar year, the quantity of allowances for the production and consumption of regulated substances that may be used for the following calendar year. EPA has codified the production and consumption baselines and phasedown schedules for regulated substances in 40 CFR 84.7. Under the phasedown schedule, for 2025, total production allowances may not exceed 229,521,263 metric tons of exchange value equivalent (MTEVe) and total consumption allowances may not exceed 181,522,990 MTEVe.

EPA regulations at 40 CFR part 84, subpart A, outline the process by which the Agency determines the number of allowances each entity is allocated. EPA allocated allowances consistent with the regulatory requirements, and has posted

entity-specific allowance allocations on its website at <https://www.epa.gov/climate-hfcs-reduction>. An allowance allocated under the AIM Act does not constitute a property right and is a limited authorization for the production or consumption of a regulated substance.

Note that while allowances may be transferred or conferred once they are allocated, they can only be expended to cover imports and production in the calendar year for which they are allocated. In other words, calendar year 2025 allowances may only be expended for production and import of bulk HFCs between January 1, 2025, and December 31, 2025.

Application-Specific Allowances

EPA established the methodology for issuing application-specific allowances in the 2021 final rule titled *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act* (86 FR 55116, Oct. 5, 2021) and codified the methodology for allocations in 40 CFR 84.13. Because application-specific allowances can be expended to either produce or import HFCs, and application-specific allowances must be provided from within the overall annual production and consumption caps, EPA subtracts the amount of application-specific allowances allocated from both the production and consumption general allowance pools. EPA issues application-specific allowances to end users in five applications established by the AIM Act: propellants in metered dose inhalers (MDIs), defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, etching of semiconductor material or wafers and the cleaning of

chemical vapor deposition chambers within the semiconductor manufacturing sector, and onboard aerospace fire suppression.

Additionally, EPA issues application-specific allowances to the U.S. Department of Defense for mission-critical military end uses.

Applying the methodology codified in 40 CFR 84.13, EPA allocated the number of application-specific allowances shown in Table 1.

TABLE 1—NUMBER OF CALENDAR YEAR 2025 APPLICATION-SPECIFIC ALLOWANCES ALLOCATED PER ENTITY

Entity	Application	Application-specific allowances (MTEVe) allocated
Analog Devices	Semiconductors	15,998.9
Applied Materials	Semiconductors	2,290.4
Armstrong Pharmaceuticals	Propellants in MDIs	237,054.0
ASML US	Semiconductors	1,033.8
AstraZeneca Pharmaceuticals	Propellants in MDIs	2,677.0
Aurobindo Pharma USA	Propellants in MDIs	23,196.2
Compsys	Structural Composite Preformed Polyurethane Foam	16,066.0
Defense Technology	Defense Sprays	5,297.2
Diodes Incorporated	Semiconductors	1,410.2
General Electric	Semiconductors	147.7
GlaxoSmithKline	Propellants in MDIs	507,289.7
GlobalFoundries	Semiconductors	117,767.1
Hitachi High-Tech America	Semiconductors	113.0
IBM Corporation	Semiconductors	613.0
Intel Corporation	Semiconductors	528,200.3
Invagen Pharmaceuticals	Propellants in MDIs	59,385.2
Jireh Semiconductor	Semiconductors	2,315.5
Keysight Technologies	Semiconductors	538.8
Kindeva Drug Delivery	Propellants in MDIs	492,000.0
LA Semiconductor	Semiconductors	2,067.3
Lam Research Corp.	Semiconductors	45,436.9
Lupin	Propellants in MDIs	19,031.0
Magic Leap	Semiconductors	516.9
Medtronic Tempe Campus	Semiconductors	455.1
Microchip Technology	Semiconductors	7,387.2
Micron Technology	Semiconductors	21,068.2
Newport Fab DBA TowerJazz	Semiconductors	4,250.5
Northrop Grumman Corporation	Semiconductors	2,793.6
NXP Semiconductor	Semiconductors	34,081.1
Polar Semiconductor	Semiconductors	9,151.7
Proteng Distribution	Onboard Aerospace Fire Suppression	6,723.4
Qorvo Texas	Semiconductors	470.0
Renesas Electronics America	Semiconductors	940.1
Samsung Austin Semiconductor	Semiconductors	235,624.8
Security Equipment Corporation	Defense Sprays	93,229.5
Semiconductor Components Industries DBA ON Semiconductor.	Semiconductors	35,794.8
SkyWater Technology	Semiconductors	10,463.5
Skyworks Solutions	Semiconductors	2,067.6
Taiwan Semiconductor Manufacturing Company Arizona Corporation (TSMC Arizona Corporation).	Semiconductors	120,485.4
Texas Instruments	Semiconductors	214,219.4
The Research Foundation for The State University of New York at NY CREATES.	Semiconductors	11,678.4
Tokyo Electron U.S. Holdings	Semiconductors	5,123.9
Tower Semiconductor San Antonio	Semiconductors	3,290.4
TSMC Washington (formerly WaferTech)	Semiconductors	10,384.5
UC San Diego	Semiconductors	940.1
UDAP Industries	Defense Sprays	110,727.8
Wabash National Corporation	Structural Composite Preformed Polyurethane Foam	49,299.5
Wolfspeed	Semiconductors	15,779.7
X-FAB Texas	Semiconductors	1,262.5
Department of Defense	Mission-critical Military End Uses	6,238,033.5
Total Issued	All	9,326,172.3

General Pool Allowances

EPA's 2023 final rule titled *Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years* (88 FR 46836, July 20, 2023) updated the methodology for

how the Agency would issue production and consumption allowances for 2024 through 2028. These updates are codified in 40 CFR 84.9 (production) and 40 CFR 84.11 (consumption), and EPA is issuing allowances to entities

who meet the criteria in the regulations, including those who were previously issued consumption allowances as new market entrants pursuant to 40 CFR 84.15.

Applying the methodology codified in 40 CFR 84.9, EPA allocated the number of production allowances shown in Table 2.

TABLE 2—NUMBER OF CALENDAR YEAR 2025 PRODUCTION ALLOWANCES ALLOCATED PER ENTITY

Entity	Production allowances allocated (MTEVe)
Application-specific allowances	^a 9,326,172.3
Arkema	26,569,642.0
Chemours	49,257,821.8
Honeywell International	111,508,876.7
Iofina Chemical	1,142.5
Mexichem Fluor DBA Koura	32,857,607.7
Total Issued	229,521,263.0

^a See Table 1; this value corresponds to the total number of application-specific allowances allocated.

Applying the methodology codified in 40 CFR 84.11, EPA allocated the number of consumption allowances shown in Table 3.

TABLE 3—NUMBER OF CALENDAR YEAR 2025 CONSUMPTION ALLOWANCES ALLOCATED PER ENTITY

Entity	Consumption allowances allocated (MTEVe)
Application-specific allowances	^a 9,326,172.3
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	126,446.8
Ability Refrigerants	126,446.8
ACT Commodities	49.2
Advance Auto Parts	452,130.1
Advanced Specialty Gases	180,476.2
AFK & Co.	122,233.6
AFS Cooling	126,446.8
A-Gas	2,156,453.7
Air Liquide USA	315,346.4
American Air Components	126,446.8
Arkema	19,656,867.3
Artsen	649,992.4
Automart Distributors DBA Refrigerant Plus	126,446.8
AutoZone Parts	1,278,314.6
AW Product Sales & Marketing	76,455.4
Bluon	21,165.2
CC Packaging	122,653.4
Chemours	21,679,708.6
Chemp Technology	126,446.8
ChemPenn	14,060.4
ComStar International	227,930.8
Creative Solution	126,446.8
Cross World Group	126,446.8
Daikin America	1,974,152.3
EDX Industry	363,578.9
Electronic Fluorocarbons	65,968.2
Fireside Holdings DBA American Refrigerants	126,433.2
First Continental International	486,962.7
FluoroFusion Specialty Chemicals	1,614,609.9
Freskoa USA	126,446.8
GlaxoSmithKline	340,497.3
Golden Refrigerant	126,446.8
Harp USA	484,265.5
Honeywell International	52,089,837.5
Hudson Technologies	2,129,502.6
Hungry Bear	126,446.8
ICool USA	2,155,102.6
IGas Holdings	16,514,965.1
Iofina Chemical	800.3
Kidde-Fenwal	126,446.8
Lenz Sales & Distribution	702,334.8
Lina Trade	126,446.8
Linde	336,839.5
Matheson Tri-Gas	21,582.0
MEK Chemical Corporation	52,517.1
Meraki Group	126,446.8

TABLE 3—NUMBER OF CALENDAR YEAR 2025 CONSUMPTION ALLOWANCES ALLOCATED PER ENTITY—Continued

Entity	Consumption allowances allocated (MTEVe)
Metalcraft	101,789.7
Mexichem Fluor DBA Koura	16,117,355.6
Mondy Global	201,598.7
National Refrigerants	12,528,840.8
Nature Gas Import and Export	518,455.3
North American Refrigerants	126,446.8
O23 Energy Plus	126,446.8
Perfect Score Too DBA Perfect Cycle	23,946.5
Reclamation Technologies	378,076.0
Resonac America	42,007.0
RGAS	2,893,842.3
RMS of Georgia	1,042,507.0
Sciarra Laboratories	5,500.4
SDS Refrigerant Services	126,446.8
Solvay Fluorides	697,362.9
Summit Refrigerants	126,446.8
SynAgile Corporation	711.3
Technical Chemical	2,160,215.3
TradeQuim	126,446.8
Transocean Offshore Deepwater Drilling	10.6
Tulstar Products	464,363.5
Tyco Fire Products	126,446.8
USSC Acquisition Corp	83,107.8
Walmart	1,442,587.7
Waysmos USA	354,712.2
Wego Chemical Group	35,773.6
Weitron	4,009,333.5
Wesco HMB	126,446.8
Wilhelmsen Ships Service	25,550.4
Total Issued	181,522,990.0

^a See Table 1; this value corresponds to the total number of application-specific allowances allocated.

Administrative Consequences

Separate from the allocation of calendar year 2025 allowances, EPA hereby provides notice that it also took final actions establishing administrative consequences for specific entities. Each action, which EPA took through a letter issued to the relevant entity, is a separate final action informing the recipient entity of an administrative consequence. The requirements pertaining to administrative consequences are codified in 40 CFR 84.35. Under this provision, EPA can retire, revoke, or withhold the allocation

of allowances, or ban an entity from receiving, transferring, or conferring allowances. A retired allowance is one that must go unused and expire at the end of the year; a revoked allowance is one that EPA takes back from an allowance holder and redistributes to all the other eligible allowance holders; and a withheld allowance is one that is retained by the Agency until an allowance holder that has failed to meet a regulatory requirement comes back into compliance, at which point EPA allocates it to the allowance holder. More information on EPA’s approach to

administrative consequences can be found at 86 FR 55168. EPA finalized administrative consequences for certain entities that were allocated application-specific allowances, listed in Table 1 for calendar year 2025. These entities failed to submit auditing reports as required in 40 CFR 84.33 and therefore EPA has withheld a portion of their allowances until the missing reports are submitted and subsequently verified by EPA: ASML US,¹ Proteng Distribution, and Wolfspeed. These final actions became effective on September 30, 2024, and are summarized below in Table 4.

TABLE 4—SUMMARY OF ADMINISTRATIVE CONSEQUENCES TAKEN PURSUANT TO 40 CFR 84.35 FOR CALENDAR YEAR 2025 APPLICATION-SPECIFIC ALLOWANCES, EFFECTIVE SEPTEMBER 30, 2024

Entity	Number of affected allowances (MTEVe)	Administrative consequence action	Reasoning
ASML US ^a	206.8	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.
Proteng Distribution	1,344.7	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.

¹ ASML US submitted an auditing report on September 27, 2024, and the Agency is reviewing that submission.

TABLE 4—SUMMARY OF ADMINISTRATIVE CONSEQUENCES TAKEN PURSUANT TO 40 CFR 84.35 FOR CALENDAR YEAR 2025 APPLICATION-SPECIFIC ALLOWANCES, EFFECTIVE SEPTEMBER 30, 2024—Continued

Entity	Number of affected allowances (MTEVe)	Administrative consequence action	Reasoning
Wolfspeed	3,155.9	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.

^a ASML US submitted an auditing report on September 27, 2024, and the Agency is reviewing that submission.

EPA finalized additional administrative consequences for certain entities that were allocated consumption allowances, as listed in Table 3 for calendar year 2025. These final actions affecting calendar year 2025 allowances became effective on September 30, 2024. Specifically, the following entities failed to submit auditing reports as required in 40 CFR 84.33 and therefore EPA has withheld a

portion of their consumption allowances until the missing reports are filed and verified by EPA: Solvay Fluorides and Wilhelmsen Ships Service. The following entities imported regulated HFCs without expending the requisite number of consumption allowances at the time of import and therefore EPA has retired and/or revoked consumption allowances commensurate with the quantities of

regulated substances imported without allowances: AFK & Co. and AutoZone Parts. Lastly, Wesco HMB sold, distributed, or offered for sale or distribution, regulated HFCs that had previously been imported in violation of EPA's import requirements contained in 40 CFR 84.5(b). A summary of these administrative consequences is included in Table 5.

TABLE 5—SUMMARY OF ADMINISTRATIVE CONSEQUENCES PURSUANT TO 40 CFR 84.35 FOR CALENDAR YEAR 2025 CONSUMPTION ALLOWANCES, EFFECTIVE SEPTEMBER 30, 2024

Entity	Number of affected allowances (MTEVe)	Administrative consequence action	Reasoning
AFK & Co.	941.4 ^a 706.1	Retire Revoke	Imported regulated HFCs without expending requisite number of allowances.
AutoZone Parts	21,763.1 ^b 10,881.6	Retire Revoke	Imported regulated HFCs without expending requisite number of allowances.
Wesco HMB	5,432.1 ^c 2,716.1	Retire Revoke	Sold, distributed, or offered for sale or distribution regulated HFCs that were imported without the requisite expenditure of allowances.
Solvay Fluorides	139,472.6	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.
Wilhelmsen Ships Service	5,110.1	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.

^a This value corresponds to 75% of the full amount of consumption without requisite allowances at the time of import. As stated in the HFC Allocation Framework Rule (86 FR 55116, Oct. 5, 2021), EPA explained it would take a 50% premium in first instances of administrative consequences. However, EPA has previously finalized administrative consequences for AFK & Co. for the same reasoning.

^b As stated in the HFC Allocation Framework Rule (86 FR 55116, Oct. 5, 2021), EPA explained it would take a 50% premium in first instances of administrative consequences. This value corresponds to 50% of the full amount of consumption without requisite allowances at the time of import.

^c As stated in the HFC Allocation Framework Rule (86 FR 55116, Oct. 5, 2021), EPA explained it would take a 50% premium in first instances of administrative consequences. This value corresponds to 50% of the full amount of regulated HFCs on a MTEVe-weighted basis that were sold, distributed, or offered for sale or distribution.

The Agency also finalized administrative consequences for Fike Corporation and Firetrace USA. These entities have historically submitted requests for additional consumption

allowances (RACAs) under EPA's regulations contained in 40 CFR 84.17, and failed to submit auditing reports as required in 40 CFR 84.33. Therefore, EPA will withhold a portion of any

calendar year 2025 consumption allowances issued to these entities until the missing reports are submitted and subsequently verified by EPA. A summary is reflected below in Table 6.

TABLE 6—SUMMARY OF ADMINISTRATIVE CONSEQUENCES PURSUANT TO 40 CFR 84.35 FOR RACA SUBMITTERS, EFFECTIVE SEPTEMBER 30, 2024

Entity	Number of affected allowances (MTEVe)	Applicable year(s)	Administrative consequence action	Reasoning
Fike Corporation	20% of granted RACAs	2025	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.

TABLE 6—SUMMARY OF ADMINISTRATIVE CONSEQUENCES PURSUANT TO 40 CFR 84.35 FOR RACA SUBMITTERS, EFFECTIVE SEPTEMBER 30, 2024—Continued

Entity	Number of affected allowances (MTEVe)	Applicable year(s)	Administrative consequence action	Reasoning
Firetrace USA	20% of granted RACAs	2025	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.

A comprehensive summary of all finalized administrative consequences with an effective date of September 30,

2024, that affect calendar year 2025 HFC allowances is contained in Table 7.

TABLE 7—CALENDAR YEAR 2025 ALLOWANCES ADJUSTED THROUGH FINALIZED ADMINISTRATIVE CONSEQUENCES PURSUANT TO 40 CFR 84.35

Entity	Allowance type	Administrative consequence action	Number of affected allowances (MTEVe)
AFK & Co.	Consumption	Retire	941.4
		Revoke	706.1
ASML US ^a	Application-specific	Withhold	206.8
AutoZone Parts	Consumption	Retire	21,763.1
		Revoke	10,881.6
Fike Corporation	Consumption	Withhold	20% of granted RACAs
Firetrace USA	Consumption	Withhold	20% of granted RACAs
Proteng Distribution	Application-specific	Withhold	1,344.7
Solvay Fluorides	Consumption	Withhold	139,472.6
Wesco HMB	Consumption	Retire	5,432.1
		Revoke	2,716.1
Wilhelmsen Ships Service	Consumption	Withhold	5,110.1
Wolfspeed	Application-specific	Withhold	3,155.9

^a ASML US submitted an auditing report on September 27, 2024, and the Agency is reviewing that submission.

In addition to the administrative consequences listed in Table 7, 142,694.8 MTEVe of consumption allowances were retired and 509,608.2 MTEVe were revoked, consistent with previously finalized administrative consequences described in *Phasedown of Hydrofluorocarbons: Notice of 2024 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of*

2020, and Notice of Final Administrative Consequences (88 FR 72060, Oct. 19, 2023). The entities subject to those prior actions include American Air Components, Bluon, Honeywell International, and Resonac America.

Adjustments to Application-Specific Allowances

As described above, certain entities listed in Table 1 have had a portion of

their calendar year 2025 allowances withheld for not submitting the auditing report required in 40 CFR 84.33. These allowances will be withheld until the missing reports are submitted and subsequently verified by EPA.

Accordingly, Table 8 shows the number of application-specific allowances available to each entity as a result of finalized administrative consequences.

TABLE 8—NUMBER OF CALENDAR YEAR 2025 APPLICATION-SPECIFIC ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2024, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES

Entity	Application	Available application-specific allowances (MTEVe), adjusting for administrative consequences
Analog Devices	Semiconductors	15,998.9
Applied Materials	Semiconductors	2,290.4
Armstrong Pharmaceuticals	Propellants in MDIs	237,054.0
ASML US ^a	Semiconductors	827.0
AstraZeneca Pharmaceuticals	Propellants in MDIs	2,677.0
Aurobindo Pharma USA	Propellants in MDIs	23,196.2
Compsys	Structural Composite Preformed Polyurethane Foam	16,066.0
Defense Technology	Defense Sprays	5,297.2
Diodes Incorporated	Semiconductors	1,410.2
General Electric	Semiconductors	147.7
GlaxoSmithKline	Propellants in MDIs	507,289.7

TABLE 8—NUMBER OF CALENDAR YEAR 2025 APPLICATION-SPECIFIC ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2024, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES—Continued

Entity	Application	Available application-specific allowances (MTEVe), adjusting for administrative consequences
GlobalFoundries	Semiconductors	117,767.1
Hitachi High-Tech America	Semiconductors	113.0
IBM Corporation	Semiconductors	613.0
Intel Corporation	Semiconductors	528,200.3
Invagen Pharmaceuticals	Propellants in MDIs	59,385.2
Jireh Semiconductor	Semiconductors	2,315.5
Keysight Technologies	Semiconductors	538.8
Kindeva Drug Delivery	Propellants in MDIs	492,000.0
LA Semiconductor	Semiconductors	2,067.3
Lam Research Corp.	Semiconductors	45,436.9
Lupin	Propellants in MDIs	19,031.0
Magic Leap	Semiconductors	516.9
Medtronic Tempe Campus	Semiconductors	455.1
Microchip Technology	Semiconductors	7,387.2
Micron Technology	Semiconductors	21,068.2
Newport Fab DBA TowerJazz	Semiconductors	4,250.5
Northrop Grumman Corporation	Semiconductors	2,793.6
NXP Semiconductor	Semiconductors	34,081.1
Polar Semiconductor	Semiconductors	9,151.7
Proteng Distribution	Onboard Aerospace Fire Suppression	5,378.7
Qorvo Texas	Semiconductors	470.0
Renesas Electronics America	Semiconductors	940.1
Samsung Austin Semiconductor	Semiconductors	235,624.8
Security Equipment Corporation	Defense Sprays	93,229.5
Semiconductor Components Industries DBA ON Semiconductor.	Semiconductors	35,794.8
SkyWater Technology	Semiconductors	10,463.5
Skyworks Solutions	Semiconductors	2,067.6
Taiwan Semiconductor Manufacturing Company Arizona Corporation (TSMC Arizona Corporation).	Semiconductors	120,485.4
Texas Instruments	Semiconductors	214,219.4
The Research Foundation for The State University of New York at NY CREATES.	Semiconductors	11,678.4
Tokyo Electron U.S. Holdings, Inc.	Semiconductors	5,123.9
Tower Semiconductor San Antonio	Semiconductors	3,290.4
TSMC Washington (formerly WaferTech)	Semiconductors	10,384.5
UC San Diego	Semiconductors	940.1
UDAP Industries	Defense Sprays	110,727.8
Wabash National Corporation	Structural Composite Preformed Polyurethane Foam	49,299.5
Wolfspeed	Semiconductors	12,623.8
X-FAB Texas	Semiconductors	1,262.5
Department of Defense	Mission-critical Military End Uses	6,238,033.5
Total Available	All	9,321,464.9

^a ASML US submitted an auditing report on September 27, 2024, and the Agency is reviewing that submission.

Adjustments to Consumption Allowances

An entity is eligible to receive redistributed allowances if they were not subject to administrative consequences that took effect on the same day (except entities that had allowances withheld). For example, if EPA revoked 50 MTEVe allowances from company A and 50 MTEVe allowances from company B, effective on the same day, EPA's redistribution of that single pool of 100 MTEVe allowances would go to all general pool allowances holders except company A and company B. This applies regardless of whether the revocation happens in

one year or over multiple years. However, entities who only had allowances withheld by the Agency as a result of failure to comply with the auditing requirements as contained in 40 CFR 84.33 were eligible to receive allowances that were redistributed.

For 2025, the total number of revoked and redistributed allowances is 523,912.0 MTEVe, which are being apportioned to eligible consumption allowance holders based on their relative market share, and the total number of retired allowances in 2025 is 170,831.4 MTEVe. These amounts are the result of administrative consequences with two distinct effective

dates. For more information on the administrative consequences finalized in 2023 that impact calendar year 2025 consumption allowances, see *Phasedown of Hydrofluorocarbons: Notice of 2024 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Administrative Consequences* (88 FR 72060, Oct. 19, 2023).

Table 9 reflects consumption allowance totals available to each entity as of October 1, 2024, after taking into account the administrative

consequences and eligibility described elsewhere in this notice.

TABLE 9—TOTAL NUMBER OF CALENDAR YEAR 2025 CONSUMPTION ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2024, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES

Entity	Available consumption allowances, adjusted for all administrative consequences (MTEVe)
Application-specific allowances	^a 9,321,464.9
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	127,006.0
Ability Refrigerants	127,006.0
ACT Commodities	49.4
Advance Auto Parts	454,129.5
Advanced Specialty Gases	181,274.3
AFK & Co	120,586.1
AFS Cooling	127,006.0
A-Gas	2,165,990.0
Air Liquide USA	316,740.9
American Air Components ^b	0.0
Arkema	19,743,794.0
Artsen	650,046.9
Automart Distributors DBA Refrigerant Plus	127,006.0
AutoZone Parts	1,251,215.7
AW Product Sales & Marketing	76,793.5
Bluon ^b	0.0
CC Packaging	123,195.8
Chemours	21,775,580.8
Chemp Technology	127,006.0
ChemPenn	14,122.6
ComStar International	228,938.8
Creative Solution	127,006.0
Cross World Group	127,006.0
Daikin America	1,982,882.5
EDX Industry	365,186.7
Electronic Fluorocarbons	65,973.7
Fireside Holdings DBA American Refrigerants	126,992.3
First Continental International	489,116.1
FluoroFusion Specialty Chemicals	1,614,745.2
Freskoa USA	127,006.0
GlaxoSmithKline	342,003.0
Golden Refrigerant	127,006.0
Harp USA	486,407.0
Honeywell International	51,631,535.0
Hudson Technologies	2,138,919.7
Hungry Bear	127,006.0
ICool USA	2,164,632.9
IGas Holdings	16,587,997.7
Iofina Chemical	803.9
Kidde-Fenwal	127,006.0
Lenz Sales & Distribution	705,440.7
Lina Trade	127,006.0
Linde	338,329.0
Matheson Tri-Gas	21,677.4
MEK Chemical Corporation	52,749.3
Meraki Group	127,006.0
Metalcraft	102,239.8
Mexichem Fluor DBA Koura	16,188,629.9
Mondy Global	202,490.2
National Refrigerants	12,584,245.9
Nature Gas Import and Export	520,748.2
North American Refrigerants	127,006.0
O23 Energy Plus	127,006.0
Perfect Score Too DBA Perfect Cycle	24,052.4
Reclamation Technologies	379,747.9
Resonac America ^b	0.0
RGAS	2,906,639.4
RMS of Georgia	1,047,117.2
Sciarras Laboratories	5,524.8
SDS Refrigerant Services	127,006.0
Solvay Fluorides	560,974.1
Summit Refrigerants	127,006.0

TABLE 9—TOTAL NUMBER OF CALENDAR YEAR 2025 CONSUMPTION ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2024, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES—Continued

Entity	Available consumption allowances, adjusted for all administrative consequences (MTEVe)
SynAgile Corporation	714.5
Technical Chemical	2,169,768.2
TradeQuim	127,006.0
Transocean Offshore Deepwater Drilling	10.6
Tulstar Products	466,417.0
Tyco Fire Products	127,006.0
USSC Acquisition Corp	83,475.4
Walmart	1,448,967.1
Waysmos USA	356,280.8
Wego Chemical Group	35,931.8
Weitron	4,027,063.6
Wesco HMB	118,847.2
Wilhelmsen Ships Service	20,553.2

^a See Table 8; this value corresponds to the total number of application-specific allowances available on October 1, 2024, after adjusting for administrative consequences.

^b While these entities were eligible for revoked and redistributed consumption allowances with an effective date of September 30, 2024, the Agency has previously finalized administrative consequences for them stating that “[EPA] [w]ill retire and revoke allowances until the full administrative consequence is covered” (88 FR 72060, Oct. 19, 2023).

Judicial Review

The AIM Act provides that certain sections of the Clean Air Act (CAA) “shall apply to” the AIM Act and actions “promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].” 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions governing judicial review. 42 U.S.C. 7607(b)(1). Section 307(b)(1) provides, in part, that petitions for review must only 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).

The issuance of calendar year 2025 allowances for the production and consumption of hydrofluorocarbons herein noticed is “nationally applicable” within the meaning of CAA section 307(b)(1). The AIM Act imposes a national cap on the total number of allowances available for each year for all entities nationwide. 42 U.S.C. 7675(e)(2)(B)–(D). For 2025, there was a national pool of 229,521,263 production

allowances and 181,522,990 consumption allowances available to distribute. The allocation action noticed herein distributed that finite set of allowances consistent with the methodology EPA established in the nationally applicable framework rule. As such, the allowance allocation is the division and assignment of a single, nationwide pool of HFC allowances to entities across the country according to the uniform, national methodology established in EPA’s regulations. Each entity’s allowance allocation is a relative share of that pool; thus, any additional allowances awarded to one entity directly affects the allocations to others.

In the alternative, to the extent a court finds the 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 the allocation action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).² In deciding to invoke this exception, the Administrator has taken into account a number of policy considerations, including his judgment regarding the benefit of obtaining the D.C. Circuit’s authoritative centralized review, rather than allowing development of the issue

² In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

in other contexts, in order to ensure consistency in the Agency’s approach to allocation of allowances in accordance with EPA’s national regulations in 40 CFR part 84. The final action treats all affected entities consistently in how the 40 CFR part 84 regulations are applied. The allowance allocation is the division and assignment of a single, nationwide pool of HFC allowances to entities across the country according to the uniform, national methodology established in EPA’s regulations, and each entity’s allowance allocation is a relative share of that pool; thus, any additional allowances awarded to one entity directly affect the allocations to others. The Administrator finds that this is a matter on which national uniformity is desirable to take advantage of the D.C. Circuit’s administrative law expertise and facilitate the orderly development of the basic law under the AIM Act and EPA’s implementing regulations. The Administrator also finds that consolidated review of the action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different regulated entities. The Administrator also finds that a nationally consistent approach to the allocation of allowances constitutes the best use of agency resources. The Administrator is publishing his finding that the allocation action is based on a determination of nationwide scope or effect in the **Federal Register** as part of this notice.

For these reasons, the final action of the Agency allocating hydrofluorocarbon allowances to entities located throughout the country is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that the 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 allocation action must be filed in the United States Court of Appeals for the District of Columbia Circuit by December 23, 2024.

Each adjudicatory action establishing an administrative consequence as described in this notice is a final action previously taken by EPA. Under section 307(b)(1) of the CAA, any petition for judicial review of such a final action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2024.

Filing a petition for reconsideration by the Administrator does not affect the finality of any action noticed herein for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such action. The final actions described herein may not be challenged later in proceedings to enforce their requirements. 42 U.S.C. 7607(b)(2).

Paul M. Gunning,

Director, Office of Atmospheric Protection.

[FR Doc. 2024-24444 Filed 10-22-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0473; FR ID 255992]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections.

Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 23, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0473.

Title: Section 74.1251, Technical and Equipment Modifications.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 100 respondents; 300 responses.

Estimated Time per Response: 0.25 hour.

Frequency of Response: Recordkeeping requirement; One-time reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 75 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements contained in 47

CFR 74.1251(b)(1) state that formal application on FCC Form 349 is required of all permittees and licensees for any of the following changes: Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been certificated by the FCC for use by FM translator or FM booster stations, or any change which could result in the electrical characteristics or performance of the station. Upon the installation or modification of the transmitting equipment for which prior FCC authority is not required under the provisions of this paragraph, the licensee shall place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the terms of the station authorization.

The information collection requirements contained in 47 CFR 74.1251(c) require FM translator licensee to notify the FCC, in writing, of changes in the primary FM station being retransmitted.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-24539 Filed 10-22-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0692; FR ID 255998]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 23, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multichannel Video Programming Distributor (MVPD).

Form Number: N/A.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents and Responses: 22,000 respondents and 253,010.

Estimated Time per Response: 0.083–2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 36,114 hours.

Total Annual Cost: No cost.

Needs and Uses: In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to adopt rules governing the disposition of home wiring owned by a cable operator when

a subscriber terminates service. The rules at 76.800 *et seq.*, implement that directive. The intention of the rules is to clarify the status and provide for the disposition of existing cable operator-owned wiring in single family homes and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–24540 Filed 10–22–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1216; FR ID 255118]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 22, 2024.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be

submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of

2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control No.: 3060–1216.

Title: Media Bureau Incentive Auction Implementation, Sections 73.3700(c), (g)(4), (h)(5) and (h)(6).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and

Responses: 1,353 respondents and 46,302 responses.

Estimated Time per Response: .004–15 hours.

Frequency of Response: One-time reporting requirement; on occasion reporting requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454.

Total Annual Burden: 17,802 hours.

Annual Cost Burden: \$961,800.

Needs and Uses: The Spectrum Act directed the Commission to hold a “reverse auction” in which broadcasters can voluntarily return some or all of their broadcast spectrum usage rights in exchange for incentive payments. The Spectrum Act also required the Commission to reorganize the broadcast television band, which will be accomplished by repacking stations, or moving broadcast stations to different channels. The Spectrum Act directed the Commission to hold a forward auction of the ultra-high frequency (UHF) spectrum obtained as a result of the reverse auction and channel repacking. This UHF spectrum was auctioned as flexible-use licenses suitable for providing mobile broadband service. Broadcast stations that participated in the forward auction were able to relinquish their spectrum rights, agree to share a channel with another broadcaster or move from the UHF to VHF band or from a high VHF channel to a low VHF channel. For non-participating broadcast stations, the Spectrum Act established a TV Broadcaster Relocation Fund (Fund) to reimburse reassigned broadcasters and multichannel video programming distributors (MVPDs) that incur expenses associated with continuing to carry relocated stations, for their reasonable expenses resulting from the post-auction channel reassignment. The

Commission adopted rules implementing the provisions of the Spectrum Act. The Incentive Auction concluded and repack process commented in April 2017. The rules governing the post-incentive auction licensing and other post-auction station-related matters are codified at 47 CFR parts 0, 1, 27, 73 and 74.

On September 19, 2023, the Commission released a Report and Order, FCC 23–72, wherein it adopted several revisions to its Part 73 rules including 73.3700. As a result of these rule revisions, a number of collections and burdens were either revised or eliminated altogether as reflected in this revised supporting statement. Sections 73.3700(b)(4)(i) and (ii) and 73.3700(d) of the rules were eliminated and therefore the corresponding collections and burdens for these rules have been eliminated. Also, revisions were made to estimates for 73.3700(c), 73.3700(g)(4) and 73.3700 (h)(5) and (h)(6) to reflected updated data now that the incentive auction is complete and the exact universe of affected entities is known.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–24546 Filed 10–22–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0463, FR ID 256033]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 23, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of internet Protocol (IP) Captioned Telephone Service, CG Docket Nos. 03–123, 10–51, and 13–24.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Individuals or household; State, Local and Tribal Government.

Number of Respondents and Responses: 5,075 respondents; 8,468 responses.

Estimated Time per Response: 0.1 hours (6 minutes) to 80 hours.

Frequency of Response: Annually, semi-annually, eight times a year, monthly, on occasion, one-time, and quarterly reporting requirements; Recordkeeping and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, in Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 15,850 hours.

Total Annual Cost: \$348,000.

Needs and Uses: On December 21, 2001, the Commission released the *2001 TRS Cost Recovery Order*, document FCC 01–371, published at 67 FR 4203, January 29, 2002, in which the Commission, among other things:

(1) required internet-based TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund administrator to be used to calculate the rate; and

(2) directed the TRS Fund administrator to expand its data collection forms accordingly.

In 2003, the Commission released the *2003 Second Improved TRS Order*, published at 68 FR 50973, August 25, 2003, which among other things required that TRS providers offer certain local exchange carrier (LEC)-based improved services and features where technologically feasible, including a speed dialing requirement which may entail voluntary recordkeeping for TRS providers to maintain a list of telephone numbers. *See also* 47 CFR 64.604(a)(3)(vi)(B).

In 2007, the Commission released the *Section 225/255 VoIP Report and Order*, published at 72 FR 43546, August 6, 2007, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under 47 U.S.C. 225, 255 to interconnected voice over internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS. *See also* 47 CFR 64.604(c)(3).

In 2007, the Commission also released the *2007 Cost Recovery Report and Order and Declaratory Ruling*, published at 73 FR 3197, January 17, 2008, in which the Commission:

(1) adopted a new cost recovery methodology for interstate traditional TRS, interstate speech-to-speech service (STS), captioned telephone service (CTS), and internet Protocol captioned telephone service (IP CTS) based on the Multi-state Average Rate Structure (MARS) plan, under which interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates, and which includes for STS additional compensation approved by the Commission for STS outreach;

(2) adopted a cost recovery methodology for internet Protocol (IP) Relay based on a price cap like methodology;

(3) adopted a cost recovery methodology for video relay service (VRS) that adopted tiered rates based on call volume;

(4) clarified the nature and extent that certain categories of costs are compensable from the Fund; and

(5) addressed certain issues concerning the management and oversight of the Fund, including prohibiting financial incentives offered to consumers to make relay calls.

The *2007 TRS Cost Recovery Order* requires that state relay administrators and TRS providers submit to the TRS Fund administrator the following information annually, for intrastate traditional TRS, STS, and CTS:

(1) the per-minute compensation rate(s) and other compensation received for the provision of TRS;

(2) whether the rate applies to session minutes or conversation minutes, which are a subset of session minutes;

(3) the number of intrastate session minutes; and

(4) the number of intrastate conversation minutes.

Also, STS providers must file a report annually with the TRS Fund administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

In 2011, to help prevent waste, fraud, and abuse, the Commission adopted three VRS orders to curtail these harmful practices. Each of these orders (collectively, the *2011 VRS Orders*) included information collection requirements.

On April 6, 2011, in document FCC 11–54, the Commission released the *2011 Fraud Prevention Order*, published at 76 FR 30841, May 27, 2011, which included several measures designed to eliminate the waste, fraud and abuse, while ensuring that VRS remains a viable and a valuable communication tool for Americans who use it on a daily basis.

On July 28, 2011, in document FCC 11–118 the Commission released the *VRS Certification Order*, published at 76 FR 47469, August 5, 2011, amending its rules for certifying internet-based TRS providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of internet-based TRS.

On October 17, 2011, in document FCC 11–155, the Commission released the *Second VRS Certification Order*, published at 76 FR 67070, October 31, 2011, addressing three petitions related to the *VRS Certification Order* by revising the burdens contained in the requirements for the submission of documentation of a provider's VRS

equipment and technologies and the submission of documentation regarding sponsorship arrangements.

The following are the final information collection requirements contained in the *2011 VRS Orders*:

(1) The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a TRS provider shall certify, under penalty of perjury, that: (1) minutes submitted to the Interstate TRS Fund (Fund) administrator for compensation were handled in compliance with the Commission's rules and are not the result of impermissible financial incentives to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates are true and correct.

(2) VRS providers shall: (a) submit to the Commission and the TRS Fund administrator a call center report twice a year and (b) notify the Commission and the TRS Fund administrator at least 30 days prior to any change to their call centers' locations.

(3) VRS providers shall submit detailed call data records (CDRs) and speed of answer compliance data to the Fund administrator.

(4) TRS providers shall use an automated record keeping system to capture the CDRs and shall submit such data electronically in standardized form to the TRS Fund administrator.

(5) internet-based TRS providers shall retain the CDRs that are used to support payment claims submitted to the Fund administrator for a minimum of five years, in an electronic format.

(6) VRS providers shall: (a) maintain copies of all third-party contracts or agreements and make them available to the Commission and the TRS Fund administrator upon request; and (b) describe all agreements in connection with marketing and outreach activities in their annual submissions to the TRS Fund administrator.

(7) TRS providers shall provide information about their TRS whistleblower protections to all employees and contractors, in writing.

In 2018, the Commission released the *IP CTS Modernization Order*, published at 83 FR 30082, June 27, 2018, in which the Commission:

(1) determined that it would transition the methodology for IP CTS cost recovery from the MARS plan to cost-based rates and adopted interim rates; and

(2) added two cost reporting requirements for IP CTS providers: (i) In annual cost data filings and supplementary information provided to the TRS Fund administrator, IP CTS

providers that contract for the supply of services used in the provision of TRS, shall include information about payments under such contracts, classified according to the substantive cost categories specified by the TRS Fund administrator; and (ii) in the course of an audit or otherwise upon demand, IP CTS providers must make available any relevant documentation. 47 CFR 64.604(c)(5)(iii)(D)(1), (6).

In December 2023, the FCC released the *2023 VRS Improvements Order*, document FCC 23–116, published at 89 FR 20125, March 21, 2024, amending its rules (1) increase from 50% to 80% the portion of monthly VRS minutes that may be handled by communications assistants (CAs) working at home; (2) modify the amount of prior interpreting experience required of VRS CAs who work at home; and (3) allow VRS providers to use contract CAs, subject to conditions, for up to 30% of their monthly call minutes. 47 CFR 64.604(c)(5)(iii)(D)(8), (d)(1)(iii)(C), (d)(2)(iv). The Commission also modified when VRS providers may seek compensation for VRS calls that originate from international IP addresses from users traveling abroad. 47 CFR 64.604(d)(6).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–24538 Filed 10–22–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1183; FR ID 254415]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 22, 2024.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–1183.

Title: Establishment of a Public Safety Answering Point Do-Not-Call Registry, CG Docket No. 12–129.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Federal Government; Not-for-profit institutions; State Local or Tribal Government.

Number of Respondents and Responses: 106,500 respondents; 1,446,333 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 1 hour.

Frequency of Response: Recordkeeping requirement; Annually, monthly, on occasion and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, February 22, 2012.

Total Annual Burden: 792,667 hours.

Total Annual Cost: No cost.

Needs and Uses: The rules adopted herein establish recordkeeping requirements for a large variety of entities, including small business entities. First, each Public Safety Answering Point (PSAP) may designate a representative who shall be required to file a certification with the administrator of the PSAP registry that they are authorized to place numbers onto that registry. The designated PSAP representative shall provide contact information including the PSAP represented, name, title, address, telephone number and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone associated with the provision of emergency services or communications with other public safety agencies. On an annual basis designated PSAP representatives shall

access the registry, review their numbers and remove any ineligible numbers from the registry. Second, an operator of automatic dialing equipment (OADE) is prohibited from contacting any number on the PSAP registry. Each OADE must register for access to the PSAP registry by providing contact information which includes name, business address, contact person, telephone number, email, and all outbound telephone numbers used to place autodialed calls. All such contact information must be updated within 30 days of any change. In addition, the OADE must certify that it is accessing the registry solely to prevent autodialed calls to numbers on the registry. An

OADE must access and employ a version of the PSAP registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and maintain record documenting this process. No person or entity may sell, rent, lease, purchase, share, or use the PSAP registry for any purpose expect to comply with our rules prohibiting contact with numbers on the registry.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–24545 Filed 10–22–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 255163]

Deletion of Item From October 17, 2024 Open Meeting

October 15, 2024.

The following item has been deleted from the list of items scheduled for consideration at the Thursday, October 17, 2024, Open Meeting. Item No. 3 was deleted by the Commission on Tuesday, October 15, 2024. The item was previously listed in the Commission's Sunshine Notice on Thursday, October 10, 2024.

Item No.	Bureau	Subject
3	Media	Title: Restricted Adjudicatory Matter Summary: The Commission will consider a restricted adjudicatory matter from the Media Bureau.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–24537 Filed 10–22–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–19]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

SUMMARY: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on this date.

Location: Virtual meeting via Teams.

Date: October 2, 2024.

Time: 11:15 a.m. ET.

Action and Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter pursuant to section 1104(b) of Title XI (12 U.S.C 3333(b)). No action was taken by the ASC.

Loretta Schuster,

Management & Program Analyst.

[FR Doc. 2024–24550 Filed 10–22–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2024–N–14]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Federal Housing Finance Agency (FHFA–OIG).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the Federal Housing Finance Agency Office of Inspector General (FHFA–OIG) is establishing FHFA–OIG–9, “Office of Counsel Legal Matters System” (System) for the purpose of collecting information that FHFA–OIG’s Office of Counsel will use in the course of providing legal opinions/advice, participating in administrative hearings, preparing for litigation, and completing other legal projects and assignments.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records will go into effect without further notice on October 23, 2024, unless otherwise revised pursuant to comments received. Routine uses will go into effect on November 22, 2024. Comments must be received on or before November 22, 2024. FHFA–OIG will publish a new notice if the effective date is delayed in order for the Agency to review the comments or if changes are made based on comments received.

ADDRESSES: Submit comments to FHFA–OIG, identified by “No. 2024–N–

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, October 29, 2024 at 10:00 a.m. and its continuation at the conclusion of the open meeting on October 30, 2024.

PLACE: 1050 First Street NE, Washington, DC and Virtual. (This Meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–24719 Filed 10–21–24; 11:15 am]

BILLING CODE 6715–01–P

14,” using any one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by email to FHFA–OIG at privacy@fhfaoig.gov to ensure timely receipt by FHFA–OIG. Please include “Comments/FHFA–OIG SORN,” in the subject line of the message.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail/Delivery Service:* The mailing address for comments is: Gregg Schwind, Attorney Advisor, Attention: Comments/FHFA–OIG SORN, Office of Inspector General, Federal Housing Finance Agency, 400 Seventh Street SW, 3rd Floor, Washington, DC 20219. Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly. See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT:

Gregg Schwind, Attorney Advisor, privacy@fhfaoig.gov or (202) 730–4933 (not a toll-free number), Office of Inspector General, Federal Housing Finance Agency, 400 Seventh Street SW, 3rd Floor, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact number above.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA–OIG seeks public comments on a new system of records and will take all comments into consideration. See 5 U.S.C. 552a(e)(4) and (11). In addition to referencing “Comments/No. 2024–N–14,” please reference “FHFA–OIG–9, Office of Counsel Legal Matters System.”

FHFA–OIG will post all public comments on the FHFA–OIG public website at www.fhfaoig.gov, except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA–OIG may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA–OIG may, in its discretion, redact or refrain from posting

all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA–OIG’s internal file and considered as required by all applicable laws. Commenters that would like FHFA–OIG to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA’s Policy on Communications with Outside Parties in Connection with FHFA Rulemakings, see https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf. FHFA–OIG cannot guarantee that such data or information, or the identity of the commenter, will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. See 12 CFR 1202.8, 12 CFR 1214.2, and FHFA’s FOIA Reference Guide at <https://www.fhfa.gov/about/foia-reference-guide> for additional information.

II. Introduction

This notice informs the public of FHFA–OIG’s proposal to establish and maintain a new system of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when establishing a new or making a significant change to an agency’s system of records. Congress has recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedure Act. Records and information in this system of records are not exempt from the requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to section 7 of Office of Management and Budget (OMB) Circular No. A–108, “*Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act*,” prior to publication of this notice, FHFA–OIG submitted a report

describing the system of records covered by this notice to the OMB, the Committee on Oversight and Accountability of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

III. New System of Records

The information in this system of records will be used by FHFA–OIG to process and track legal opinions/advice, administrative hearings, litigation, and other legal projects and assignments, for FHFA–OIG’s Office of Counsel. The new system of records is described in detail below.

SYSTEM NAME AND NUMBER:

Office of Counsel Legal Matters System, FHFA–OIG–9.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, and any alternate work site used by employees of FHFA–OIG and contractors assisting agency employees.

SYSTEM MANAGER(S):

Chief Counsel, Office of Counsel, (202) 649–3065, Office of Inspector General, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 CFR 1200.1 through 1200.2; 5 U.S.C. 301; 5 U.S.C. 402 through 403; 12 U.S.C. 4517(d); and 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to support the Inspector General and FHFA–OIG staff on legal matters related to the functions, activities, operations, and employees of FHFA–OIG. In addition, the system of records may be used to track the status, progress, and disposition of matters assigned to the legal staff, generate reports about any past or planned activities for each matter, and capture summary information (such as timelines, due dates, and work assignments). The system will also maintain historical reference information pertaining to such matters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are employees of and detailees to the Office of Counsel, assigned contractor personnel; parties, witnesses, subjects, complainants, and other persons

involved in litigation, administrative actions, and other legal proceedings and activities conducted by FHFA-OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include memoranda, personnel documents, litigation documents, and other legal records that may contain information such as the names, addresses, email addresses, and telephone numbers for current or former FHFA-OIG employees and contractor personnel, as well as descriptions of the matters as provided by assigned FHFA-OIG staff. Records also may contain the names of individuals or companies and associated entities that are relevant to a matter, including parties, witnesses, agency employees, and agents of the entities that FHFA regulates, interagency partners, and may derive from pleadings and discovery materials generated in connection with civil proceedings or administrative actions, as well as correspondence or memoranda related to work assignments.

RECORD SOURCE CATEGORIES:

The names, business email addresses, and business telephone numbers for FHFA-OIG employees and contractor personnel are obtained from the FHFA-OIG Active Directory. Records also are provided by the Office of Counsel employees and contractor personnel assigned to legal matters and may derive from pleadings or discovery materials in connection with civil proceedings or administrative actions, as well as correspondence or memoranda related to work assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records and the information contained therein may be disclosed outside of FHFA-OIG as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, to the extent such disclosures are compatible with the purposes for which the information was collected:

(1) To appropriate agencies, entities, and persons when—(a) FHFA-OIG suspects or has confirmed that there has been a breach of the system of records; (b) FHFA-OIG has determined that as a result of a suspected or confirmed breach there is a risk of harm to individuals, FHFA-OIG (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and

persons as reasonably necessary to assist with FHFA-OIG's efforts to (i) respond to a suspected or confirmed breach or (ii) prevent, minimize, or remedy such harm.

(2) To another federal agency or federal entity, when FHFA-OIG determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or; (b) 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 to national security, resulting from a suspected or confirmed breach.

(3) When there is evidence of 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), the relevant records in the system of records may be referred, as a routine use, to the appropriate agency (*e.g.*, federal, state, local, tribal, foreign, or a financial regulatory organization) charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing a statute, rule, regulation, or order.

(4) To any individual during the course of an inquiry or investigation conducted by FHFA-OIG, or in connection with litigation, if FHFA-OIG has reason to believe the individual to whom the record is disclosed may have further information relevant to the inquiry, investigation, or litigation.

(5) To contractors, agents, or other authorized persons performing work on behalf of FHFA-OIG who have a need to access the information in the performance of their official duties or activities.

(6) To appropriate third parties contracted by FHFA-OIG to facilitate mediation or other dispute resolution procedures or programs.

(7) To outside counsel contracted by FHFA-OIG, the U.S. Department of Justice (DOJ) (including United States Attorney Offices), or other federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant and necessary to the litigation and one of the following is a party to the litigation or has an interest in the litigation:

- a. FHFA-OIG;
- b. An employee of FHFA-OIG in his/her official capacity;
- c. An employee of FHFA-OIG in his/her individual capacity where DOJ or

FHFA-OIG has agreed to represent the employee; or

d. The United States or a federal agency, and FHFA-OIG determines that the records are relevant and necessary to the litigation and the use of the records is compatible with the purpose for which FHFA-OIG collected the records.

(8) To the National Archives and Records Administration or other federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(9) To an agency, organization, or individual for the purpose of performing audit or oversight activities as authorized by law, but only such information as is relevant and necessary to such activities.

(10) To another federal Office of the Inspector General, law enforcement Task Force, or other federal, state, local, foreign, territorial, or tribal unit of government, other public authorities, or self-regulatory organizations for the purpose of preventing and/or identifying fraud, waste, or abuse related to FHFA's programs or operations.

(11) To other federal Offices of Inspector General or other entities, during the conduct of internal and external peer reviews of FHFA-OIG.

(12) To the public or to the media for release to the public when the matter under audit, review, evaluation, investigation, or inquiry has become public knowledge, or when the Inspector General determines that such disclosure is necessary either to preserve confidence in the integrity of FHFA-OIG's audit, review, evaluation, investigative, or inquiry processes or is necessary to demonstrate the accountability of FHFA-OIG employees, officers or individuals covered by the system, unless the Inspector General or his/her delegatee determines, after consultation with counsel and the Senior Privacy Official, that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) To Congress, congressional committees, or the staffs thereof, once an FHFA-OIG report or management alert has become final and the Inspector General determines that its disclosure is necessary to fulfill the Inspector General's responsibilities under the Inspector General Act of 1978.

(14) To a federal agency or other entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee or contractor; the assignment, detail, or deployment of an employee or

contractor; the issuance, renewal, suspension, or revocation of an employee's or contractor's security clearance; the execution of a security or suitability investigation; the adjudication of liability; or coverage under FHFA–OIG's liability insurance policy.

(15) To the Council of the Inspectors General on Integrity and Efficiency and its committees, another federal Office of Inspector General, or other Federal law enforcement office in connection with an allegation of wrongdoing by the Inspector General or by designated FHFA–OIG staff members.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic format. Electronic records are stored on FHFA–OIG's secure network, authorized cloud service providers, and authorized contractor networks located within the continental United States. Paper records are stored in locked offices, locked file rooms, and locked file cabinets or safes.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records will be retrieved primarily by an individual's name or business email address but may also be obtained by a search using any search term or filter.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with FHFA's Comprehensive Record Schedule, Section 4 (N1–543–11–1, approved on 01/11/2013) and the FHFA–OIG File Plan.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in controlled access areas. Electronic records are protected by restricted access procedures, including user identifications and passwords. Only FHFA–OIG staff (and FHFA–OIG contractors assisting such staff) whose official duties require access are allowed to view, administer, and control these records. The System Owner controls access to this System and limits access in accordance with the above.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" Below.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" Below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of any records about themselves contained in this system should address their inquiry via email to privacy@fhfa.gov, or by mail to the Office of Inspector General, Federal Housing Finance Agency, 400 Seventh Street SW, 3rd Floor, Washington, DC 20219, or in accordance with the procedures set forth in 12 CFR part 1204. *Please note that all mail sent to FHFA–OIG via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Mary B. Schaefer,

Acting Chief Counsel, Federal Housing Finance Agency, Office of Inspector General.

[FR Doc. 2024–24483 Filed 10–22–24; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–09]

Notice of Filing of Amended Complaint; TZ SSE Buyer, LLC, Complainant v. COSCO Shipping Lines Co., Ltd., Respondent

Served: October 17, 2024.

Notice is given that an amended complaint has been filed with the Federal Maritime Commission (the "Commission") by TZ SSE Buyer, LLC (the "Complainant") against COSCO Shipping Lines Co., Ltd. (the "Respondent"). Complainant states that the Commission has jurisdiction over the amended complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondent as an ocean common carrier, as defined in 46 U.S.C. 40102(18), that has entered into a service contract, as defined in 46 U.S.C. 40102(21), with the original complainants.

Complainant is a Delaware limited liability company with a principal place of business in Toledo, Ohio. Impact Products, LLC and Safety Zone, LLC (the "original complainants") filed the verified complaint in this proceeding on February 7, 2024, and subsequently filed for Chapter 11 bankruptcy and sold the claims asserted in this proceeding to Complainant. The original complainants are shippers as this term is defined under 46 U.S.C. 40102(23) with offices in Ohio, Tennessee, and Connecticut, among other locations.

Complainant identifies Respondent as a company organized under the laws of

China with its United States office located in Secaucus, New Jersey and as a global ocean carrier.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainant alleges these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the original complainants and their agents and service providers, and from the acts or omissions of the Respondent that led to the assessment of these charges.

An answer to the amended complaint must be filed with the Commission as provided in Administrative Law Judge Alex M. Chintella's October 16, 2024, Order Granting Motion for Leave to File Second Amended Complaint. The full text of the amended complaint and this order can be found in the Commission's electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/24-09/>.

The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,
Secretary.

[FR Doc. 2024–24534 Filed 10–22–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL TRADE COMMISSION

[File No. P222100]

Horseracing Integrity and Safety Authority Assessment Methodology Rule Modification

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment.

SUMMARY: As required by the Horseracing Integrity and Safety Act of 2020, the Federal Trade Commission publishes a proposed modification of the Horseracing Integrity and Safety Authority's rules addressing horseracing in the United States. The proposed rule modification would amend the Rule 8500 Series, the Assessment Methodology Rule, which establishes a methodology for determining assessments described in the enabling statute. This document contains the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the

Commission should approve the proposed rule modification.

DATES: The Commission must approve or disapprove the proposed modification on or before December 23, 2024. If approved, the proposed rule modification would be effective 30 days following the date of the Commission's order approving the modification. Comments must be filed on or before November 6, 2024.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write "HISA Assessment Methodology Rule Modification" on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sarah Botha (202-326-2036), Attorney Advisor and Acting HISA Program Manager, Office of the Executive Director, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Horseracing Integrity and Safety Act of 2020¹ (the "Act") recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority ("HISA" or the "Authority"), which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission ("FTC" or the "Commission").² The proposed rules and rule modifications must be published in the **Federal Register** for public comment.³ Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.⁴

Pursuant to section 3053(a) of the Act and Commission Rule 1.142, notice is hereby given that, on October 4, 2024, the Authority filed with the Commission a proposed Assessment Methodology Rule modification and supporting documentation as described in Items I, II, III and IX below, which Items have been prepared by the

Authority. The Office of the Secretary of the Commission determined that the filing complied with the Commission's rule governing such submissions.⁵ The Commission is publishing this document to solicit comments on the proposed rule modification from interested persons.

I. Self-Regulatory Organization's Statement of the Background, Purpose of, and Statutory Basis for the Proposed Rule Modification

a. Background and Purpose

The Act recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. The Assessment Methodology Rule is established in the Rule 8500 Series, the "Assessment Methodology Rule."⁶ The Rule 8500 Series was published in the **Federal Register** on February 18, 2022,⁷ and subsequently approved by the Commission by Order dated April 1, 2022.⁸ The Authority filed a proposed rule modification to the Rule 8500 Series on October 20, 2022. The modification was published in the **Federal Register** on November 10, 2022,⁹ and approved by the Commission by Order dated January 9, 2023.¹⁰

The Authority now proposes modifications to several provisions in the Rule 8500 Series. The proposed rule modifications are described in detail in Item II of this document. As set forth below, the proposed modifications seek to eliminate consideration of the Projected Purses Paid from the current assessment equation and instead base assessments solely on Projected Starts. In addition, the proposed rule modifications establish by rule the equitable allocation among Covered Persons of the applicable fee per racing

start for the Assessment Calculation for each Racetrack. Finally, several modifications are proposed to clarify the language of several rules for greater precision.

The proposed modifications are consistent with the requirements of the Act in that they further the purpose of properly and equitably allocating the costs of the Authority's operations to the State racing commissions and/or Covered Persons involved with Covered Horseraces, as mandated by 15 U.S.C. 3052(f). The cost allocations ensure that the Authority is adequately funded and able to effectively implement and enforce the horseracing anti-doping and medication control program and the racetrack safety program, as required under the Act. Successful implementation of the Act and the two programs operates to ensure and enhance the safety, welfare and integrity of Covered Horses, Covered Persons, and Covered Horseraces. The proposed modifications have been crafted to address specific issues in the most precise manner possible, and no reasonable alternatives presented themselves for consideration.

The Act requires that the Authority provide to each State racing commission an estimated amount required from the State to "(I) to fund the State's proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program for the next calendar year; and (II) to liquidate the State's proportionate share of any loan or funding shortfall in the current calendar year and any previous calendar year."¹¹ A State's proportionate share is to be based on "(aa) the annual budget of the Authority for the following calendar year, as approved by the Board; and (bb) the projected amount of covered racing starts for the year in each State."¹² The Act further instructs the Authority to "take into account other sources of Authority revenue" as part of this calculation.¹³

Any State racing commission may elect to remit fees directly to the Authority.¹⁴ If a State racing commission does not elect to remit fees pursuant to 15 U.S.C. 3052(f)(2), then the Authority is required to "not less frequently than monthly, calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding

¹ 15 U.S.C. 3051 through 3060.

² 15 U.S.C. 3053(b)(2).

³ 15 U.S.C. 3053(b)(1).

⁴ 15 U.S.C. 3053(c)(1).

⁵ 16 CFR 1.140 through 1.144; *see also* FTC, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021).

⁶ The Assessment Methodology Rule is also referred to herein as the "Cost Methodology Rule" or "Rule 8500 Series."

⁷ *See* FTC, Notice of HISA Assessment Methodology Proposed Rule ("2022 Proposed Rule Notice"), 87 FR 9349 (Feb. 18, 2022).

⁸ FTC, Order Approving the Assessment Methodology Rule Proposed by the Horseracing Integrity and Safety Authority (Apr. 1, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Assessment%20Methodology.pdf.

⁹ *See* FTC, Notice of HISA Assessment Methodology Proposed Rule Modification, 87 FR 67915 (Nov. 10, 2022).

¹⁰ FTC, Order Approving the Assessment Methodology Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Jan. 9, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_hisa_assessment_methodology_modification_not_signed_002_0.pdf.

¹¹ 15 U.S.C. 3052(f)(1)(C)(i).

¹² 15 U.S.C. 3052(f)(1)(C)(ii).

¹³ *Id.*

¹⁴ 15 U.S.C. 3052(f)(2).

month.”¹⁵ This calculation is required to be allocated equitably “among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate” and collected “according to such rules as the Authority may promulgate.”¹⁶

On September 18, 2024, HISA representatives shared a draft of the proposed rule modification with a number of interested stakeholders for input. Those interested stakeholders included: Racing Officials Accreditation Program; Racing Medication and Testing Consortium (Scientific Advisory Committee); National Thoroughbred Racing Association; The Jockey Club; The Jockeys’ Guild; Thoroughbred Racing Association; Thoroughbred Owners of California; California Horse Racing Board; National Horsemen’s Benevolent and Protective Association; Thoroughbred Owners and Breeders Association; Kentucky Thoroughbred Association; American Association of Equine Practitioners; American Veterinary Medical Association; Stronach Racing Group (2 thoroughbred racetracks); Churchill Downs (6 thoroughbred racetracks); Keeneland; Del Mar; Association of Racing Commissioners International; Kentucky Racing Commission; Maryland Racing Commission; Delaware Racing Commission; Ohio Racing Commission; Thoroughbred Horsemen’s Association; Thoroughbred Safety Coalition; New York Racing Association; Breeders’ Cup; and ROCO.

Additionally, on September 18, 2024, the rule modification proposal was made available to the public for review and comment on the HISA website at <https://www.hisau.org/>. Several comments were received from various stakeholders, which are outlined in Item III of this document. Attached to this document is Exhibit A, which includes copies of all comments received concerning the rule modification proposal.

With the review, input and ultimate approval of the Authority’s Board of Directors, the proposed rule modification to the Rule 8500 Series enhances the procedures for the Cost Methodology Rule promulgated by the Authority.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Modification

Rule 8510, Definitions, sets forth defined terms for the Rule 8500 Series. The modification in Rule 8510(a) amends the definition of “Annual Covered Racing Starts” effective January 1, 2026. This change is discussed below in connection with the modification of Rule 8520(c)(2). The modification in Rule 8510(e) amends the definition of “Projected Purse Starts” to “Projected Purses Paid” and clarifies that the total amount of purses paid for Covered Horseraces includes all purse supplements included in the Equibase result chart.¹⁷ The underlying principle of the current assessment methodology is to focus on purses actually paid. It is of no consequence whether the purses paid consist of money from purse funds or from purse supplements. This modification simply reinforces the principle behind the current Cost Assessment Rule. The deletion in Rule 8520(a) deletes language that was operative only in 2022 and is now no longer necessary.

The addition set forth in Rule 8520(b) simply makes explicit the existing practice of calculating and distributing the estimated amount required from each State by Racetrack. Moreover, this new language corresponds to the new definition of “Annual Covered Racing Starts” effective January 1, 2026.

The proposed modifications in Rule 8520(c)(1) are not substantive. The proposed changes remove unnecessary language and correct subsection and definition references.

The proposed modifications in Rule 8520(c)(2) change the method of calculation for determining the amount of assessment owed from each State. Currently, the Cost Methodology Rule determines the assessment based on

¹⁷ The proposed modifications posted for public comment stated that the total amount of purses paid for Covered Horses shall include “all purse supplements of any kind.” A commentator raised the question of whether “including all purse supplements of any kind” was too broad. See Exhibit A, Comment from Christopher McErlean, PENN Entertainment, Inc. (“Penn”) (“Not all supplements are paid as part of the advertised purse at same time as payment of race purse is made, but are determined or calculated on amount of purse money earned and paid at a future date; such funds are not always disclosed or known by a Racetrack with no ability to track.”). This definition has been revised in response to this comment and now reads as follows: Projected Purses Paid means: (i) the total amount of purses paid for covered horseraces (including all purse supplements included in the Equibase result chart) in the previous twelve (12) months as reported by Equibase (not including the Breeders’ Cup World Championships Races), after taking into consideration alterations in purses paid for the relevant State(s) for the following calendar year.

Projected Starts and Projected Purses Paid. Under the proposed modification, beginning January 1, 2026, the Cost Methodology Rule will calculate the assessment solely based on Projected Starts. In a response to comments posted to the **Federal Register** in 2022 regarding the proposed rule establishing the methodology for determining assessments, the Authority committed to “review[ing] the Methodology Rule Proposal on an annual basis to ensure that the formula that forms the basis of the assessments is equitable and as a part of this review, the Authority will consider the comments that argue otherwise.” See March 14, 2022 letter to Secretary April J. Tabor (the “March 14, 2022 Letter”).¹⁸ Since making that commitment, the Authority has thoroughly reviewed and reconsidered the Cost Methodology Rule.

Although the current Cost Methodology Rule was the appropriate rule when the Act was implemented in 2022, the Authority has been regularly analyzing whether it continues to be the appropriate rule and now concludes that beginning January 1, 2026, the more appropriate and equitable approach is to base assessments on Projected Starts only. The Authority is now in a position to review the successful operation of its Racetrack Safety program for more than two years and its Anti-Doping and Medication Control (“ADMC”) program for over one year. Before the programs went into effect, the Authority anticipated:

that stakes races and graded stakes races will have higher testing costs and that horses that compete in such races will be subjected to more vigorous out-of-competition testing, which is an expensive element of a vigorous drug testing program. In addition, it is anticipated that drug disqualifications in stakes races will result in higher enforcement costs. Currently, much of the protracted and costly litigation in the states concerns drug positive disqualifications in stakes races. See e.g., *Kentucky Horse Racing Commission v. Motion*, 592 SW3d 739, 744 (Ky. App. 2019) (litigation over a drug positive in a 2015 stakes race did not conclude until the Kentucky Supreme Court denied discretionary review in 2020).

See March 14, 2022 Letter.

Actual experience with the implementation of the Act has shown these budgetary predictions did not come to fruition. Due to the automatic Disqualification of race results for any established Presence violation under ADCM Program Rules 3212 or 3312, and the inability to avoid this sanction (even

¹⁸ This letter is available on the docket for the 2022 Proposed Rule Notice at <https://www.regulations.gov/docket/FTC-2022-0014/document>.

¹⁵ 15 U.S.C. 3052(f)(3)(A).

¹⁶ 15 U.S.C. 3052(f)(3)(B), (f)(3)(C)(i).

if a Covered Person is found to have No Fault or Negligence under ADMC Program Rules 3224 or 3324 or No Significant Fault or Negligence under ADMC Program Rules 3225 or 3325), Covered Persons are less likely to litigate potential Program violations based solely on purse amounts. Instead, proceedings are more likely to occur based on the classification of the Prohibited Substance involved. Cases involving Banned Substances, which have a default sanction of a two-year period of Ineligibility, have a much greater chance of being litigated, regardless of the place in which the Covered Horse finished or the category of the race at issue. While the grade of the race is a consideration for the selection of Covered Horses for Out-of-Competition testing, it is only one factor. Such testing is also driven by risk assessment (as required by the ADMC Program Rules), which can include intelligence received about the Covered Horse or Covered Person, Testing history, and the movement of the Covered Horse. It should also be noted that laboratory analysis costs are not affected by the grade of the race at issue or whether the test is Post-Race or Out-of-Competition. Quite simply, the Authority's expenses after the initial implementation period have turned out to be closely correlated to starts and not to purse amounts or the grade of a race. Therefore, the Authority has determined that going forward the most appropriate and equitable approach is to base the assessments solely on Projected Starts, and the modifications in Rule 8520(c)(2) implement that approach.

It should also be noted that numerous stakeholders have initiated litigation against the Authority over the use of paid purses in the Cost Methodology Rule. In fact, many of these entities benefit from the use of purses in the assessment formula but nevertheless believe that actual starts should be the sole basis for calculating the assessments. For example, in a Federal action filed by various West Virginia and Louisiana governmental and horseracing entities, including the Louisiana and West Virginia racing commissions, the court ruled:

Because the FTC acknowledged that HISA's methodology includes "a metric that is not part of the Act's basis of calculation of fees—purses," this Court finds that Plaintiffs have shown a likelihood that the Assessment Methodology Rules are unlawful. While there is limited discretion given to HISA for determining funding, it cannot go outside the authority given to it in § 3052(f). By adding this additional metric, HISA went outside the bounds of the Act and its authority for calculations. Plaintiffs are likely

to succeed on the merits on their claim that the Assessment Methodology Rules exceeds HISA's statutory authority.

Louisiana v. Horseracing Integrity & Safety Auth. Inc., 617 F. Supp. 3d 478, 498 (W.D. La. 2022) (the "Louisiana Action").

After remand from the United States Court of Appeals for the 5th Circuit, the following entities filed an Amended Complaint in the Louisiana Action: the State of Louisiana, the Louisiana State Racing Commission, the Louisiana Horsemen's Benevolent and Protective Association 1993, Inc., Louisiana Thoroughbred Breeders Association, the State Of West Virginia, the West Virginia Racing Commission, the State Of Oklahoma, the Oklahoma Horse Racing Commission, the State of Nebraska, Nebraska Racing and Gaming Commission, the State Of Arkansas, the State Of Mississippi, Arizona Horsemen's Benevolent and Protective Association, Arkansas Horsemen's Benevolent and Protective Association, Illinois Horsemen's Benevolent and Protective Association, Iowa Horsemen's Benevolent and Protective Association, Indiana Horsemen's Benevolent and Protective Association, Kentucky Horsemen's Benevolent and Protective Association, Minnesota Horsemen's Benevolent and Protective Association, Nebraska Horsemen's Benevolent and Protective Association, Ohio Horsemen's Benevolent and Protective Association, Oklahoma Horsemen's Benevolent and Protective Association ("Oklahoma HBPA"),¹⁹ Pennsylvania Horsemen's Benevolent and Protective Association, Washington Horsemen's Benevolent and Protective Association, Charles Town [West Virginia] Horsemen's Benevolent and Protective Association, Tampa Bay Downs [Florida] Horsemen's Benevolent And Protective Association, Fonner Park [racetrack in Nebraska] and Horsemen's Park [racetrack in Nebraska]. The Amended Complaint seeks to have the Cost Methodology Rule vacated and enjoined because it includes purses in the assessment formula. The Amended Complaint states that purses cannot be utilized in the assessment formula and that the formula should be based on starts. Although the Authority believes its current Cost Methodology Rule is consistent with, and in accordance with the Act, the proposed modification will remove the threat and cost of litigation on this

issue. As is evident from the list of plaintiffs in the proffered Amended Complaint, many of the States that benefit from the purses paid portion of the assessment calculation reject this benefit as being inconsistent with the Act.

Proposed Rule 8520(e)(1) addresses the process for collecting the assessment if a State racing commission does not elect to remit fees pursuant to 15 U.S.C. 3052(f)(2) or has remitted a partial payment under Rule 8520(a). The changes contained in Rule 8520(e)(1) make explicit the current practice of calculating and distributing the estimated amount required from each State by Racetrack. The other modifications in Rule 8520(e)(1) clarify the formula that is used to calculate the applicable fee per racing start. And finally, a new subsection (v) is added to Rule 8520(e)(1). Subsection (v) states that underpayments, overpayments and past due amounts shall be equitably adjusted in the succeeding calendar year. This modification provides clear direction on the calculation of the applicable fee per racing start and specifies that underpayments, overpayments and past due amounts shall be adjusted in the succeeding calendar year.

Under current Rule 8520(e)(3), the Authority determines how the Assessment Calculation is allocated among Covered Persons. The proposed Rule 8520(e)(3) establishes the equitable allocation for the applicable fee per racing start for the Assessment Calculation for each Racetrack as follows: Racetrack: 50%; Owners: 43.50%; Trainers: 5.00%; and Jockeys: 1.50%.²⁰ In addition, the proposed rule permits the applicable horsemen's group to agree to pay the applicable starter fee for the owners, trainers and jockeys from the purse account or other sources²¹ and that such payments shall be deemed to be equitably allocated among the owners, trainers and jockeys.

The proposed Rule 8520(e)(3) also allows the horsemen's group and the Racetrack to mutually agree to the allocation of the applicable fee per racing start. And finally, the proposed

²⁰ Under the current rule, unless the Racetrack and the applicable horsemen's group agreed otherwise, the Authority established the equitable allocation for the applicable fee per racing start for the Assessment Calculation for each Racetrack 50% to the Racetrack and 50% to the horsemen. In most instances, the horsemen have agreed to pay their share out of the purse account. The proposed allocation of Owners: 43.50%; Trainers: 5.00%; and Jockeys: 1.50% is a reasonable estimation of the overall percentage amount Owners, Trainers and Jockeys receive out of the purse funds.

²¹ Penn noted that the phrase "other sources" should be added.

¹⁹ Officers and board members of the Oklahoma HBPA have filed a separate lawsuit in Federal court in Oklahoma claiming that the assessment formula should only utilize starts. See *Joe Offolter, et al. v. Horseracing Integrity and Safety Authority, Inc., et al.*, Case No. CIV-24-749-D (W.D. Okla.).

Rule 8520(e)(3) permits a Racetrack to voluntarily assume a larger percentage of the applicable fee per racing start than set forth in the rule. These modifications will establish by rule how the Assessment Calculation is allocated among Covered Persons. The remainder of the modifications memorialize current practices among the horsemen's groups and the racetracks.

It should be noted that the current Rule 8520(e)(3) is the subject of a court challenge. *See Kelly et al., v. Horseracing Integrity and Safety Authority et al.*, Civ. No. 4:24-cv-00264 (S.D. Iowa). Although the Authority believes it can successfully defend the litigation, it does not believe it is prudent to utilize resources to defend the current rule when the modified rule achieves the same result and eliminates the risk, cost, and expense of litigation.

The modifications in Rule 8520(f) remove the objection procedure for objecting to relevant Equibase numbers. The modified definition of Projected Purses Paid and the new parenthetical in Rule 8520(f) make clear that only purses paid to the racing participants are counted in the assessment formula. The critical attribute of the use of paid purses under the current assessment formula was to gauge racing industry strength by the purse amounts paid to the participants (regardless of the source of these funds). The Equibase result chart provides the actual amount paid to the racing participants (regardless of the source of the funds). These objection procedures are no longer necessary and have also been the subject of a court challenge. *See Kelly et al., v. Horseracing Integrity and Safety Authority et al.*, Civ. No. 4:24-cv-00264 (S.D. Iowa). Although the Authority believes it can successfully defend the litigation, it does not believe that utilizing resources to defend an unnecessary rule is prudent.

The modification in Rule 8520(h) recognizes that the Authority's address may change and incorporates the Authority's address located on the Authority's website for all future notices required to be given to the Authority pursuant to the Act and the associated regulations.

Proposed Rule 8520(i) is a new subsection. This new provision imposes interest on past due amounts. The imposition of interest on past due amounts ensures that prompt payments are made. Interest imposed on past due amounts is common throughout commercial and government practices across the country.

III. Self-Regulatory Organization's Summary of Comments Received Pre-Submission and Its Responses to Those Comments

The substance of various comments received, and the Authority's responses are summarized below. Comments were received from eleven individuals and groups in the horseracing industry.²² Two of the commentators supported the modifications in Rule 8520(c)(2) that will now base the assessment calculation solely on Projected Starts.²³

Eight commentators objected to the proposed modifications to Rule 8520(c)(2).²⁴ All of these comments have been considered. The assessment calculation has been the subject of an ongoing debate since the original rule was proposed in 2022. *See, e.g.*, March 14, 2022 Letter at n. 10. The Authority has considered both sides of the debate and has concluded that—for the reasons set forth above—the most appropriate and equitable approach going forward is to base the assessments solely on Projected Starts. It should be noted that the Ohio HBPA is taking a different view on the assessment rule in its comment than it is taking in litigation. The Ohio HBPA claims that the modification is “a blatant attempt to shift HISA fees from the large tracks running short meets with large purse structures, which arguably can afford to pay those fees, to smaller tracks who run more racing days with much smaller purse structures who almost assuredly cannot afford them.” This claim is in direct contravention of the position the Ohio HBPA is taking in the Louisiana Action, in which the Amended Complaint states that consideration of

²² Diane Hain (“Ms. Hain”), Phil Ziegler, President of Emerald Downs (“Mr. Ziegler”), the Minnesota Racing Commission (“MRC”), California Horse Racing Board (“CHRB”), 1/ST Racing (“1/ST”), Penn, Canterbury Park (“Canterbury”), Ohio Horsemen's Benevolent and Protective Association (“Ohio HBPA”), Churchill Downs Inc. (“CDF”), Washington Horse Racing Commission (“WHRC”) and National Horsemen's Benevolent and Protective Association (“NHBPA”).

²³ 1/ST (We are generally in support of this methodology for determining assessments at the various racetracks across the country. We believe that it is a fair way to apportion the costs of HISA. Particularly because the costs for many of the aspects of HISA, such as drug testing, are fixed irrespective of the purse level at a racetrack.”) and CHRB (“the funding formula seems fine”).

²⁴ Ms. Hain (modified rule would place an unfair burden on small racetracks); Mr. Ziegler (same); WHRC (same); Penn (same); Ohio HBPA (same); NHBPA (same); MRC (modified rule would place an unfair burden on small racetracks and estimates that the racetrack's assessment in Minnesota would rise from \$883,327 to \$1,049,000); Canterbury (same).

any factor but starts is contrary to the Act.²⁵

Three commentators addressed comments to other aspects of the Rule 8500 Series.²⁶ As noted previously, Penn's comment regarding the Projected Purses Paid definition was incorporated in the modification. Penn also offered additional comments. Penn stated that use of the condition book in Rule 8520(e) is not a reliable guide for estimation of races because the condition book can overestimate “the number of races in order to allow for a variety and cross section of potential races to be used.” The Authority recognizes that the condition book could overestimate the number of races. This is the reason that the estimate is based on historical data from Equibase in addition to the condition book. The condition book will specify the planned number days of racing, and this information combined with the historical data will lead to the best estimate.

In addition, Penn states that the assessment calculation in Rule 8320(e) “should be paid on a 30-day, net basis which is traditional payment rate for most businesses.” The Authority has adopted that suggestion in the proposed rule. Finally, Penn states that the interest rate charge “should not have additional points added” and “Racetracks should not be charged interest on amounts owed by other Covered Persons who have not paid pursuant to the Regulations.”²⁷ After consideration of the comment, the rule has been modified to charge interest at prime rate without additional points.

The NHBPA argues that “[o]ften times covered horses may run in a race where they are not entitled to any of the supplements offered beyond the guaranteed purse, thus the added purse structure does not apply to all horses and therefore should not be added to the determination of funding methodology.” The revised definition addresses this concern. As discussed above, the Equibase result chart reports the money actually paid to the race participants. The remainder of the comments of the NHBPA are directed at portions of the Rule 8500 Series that have not been modified.

²⁵ It should also be noted that the NHBPA is taking a position directly contrary to numerous of its State affiliates.

²⁶ NHBPA, CDI and Penn.

²⁷ Penn also asserts that a “Racetrack should not be responsible, or liable, for any payments due from other Covered Purses required to pay a portion of the Assessment” and that “Racetracks should not be required to collect and remit funds from Owners/Trainers/Jockeys.” These comments relate to portions of the rule that are unchanged from the current rule.

CDI claims that the Authority is not authorized to collect interest. The Authority disagrees. Proposed Rule 8520(i) is fully consistent with the Act, which authorizes HISA to assess a fee owed to HISA and “collect such fee according to such rules as the Authority may promulgate.” 15 U.S.C. 3052(f)(3)(C)(i). Requiring an interest rate on amounts past due for assessments is necessary to incentivize timely payments and ensure HISA has the cash flow required to sustain its operations. CDI also objects to the removal of the objection process related to Equibase data in proposed Rule 8520(f). It is important to note that to date, no racetrack has lodged an objection, and the example of steeplechase racing offered by CDI is a non sequitur. Lastly, CDI argues that by modifying Rule 8520(b) to permit the estimated amount required from each State to be broken down by Racetrack, the Authority is not complying with the Act. This argument is not well-founded. In permitting the Authority to provide the estimated amount owed by Racetrack, the rule does not alter the State’s right to opt to pay the assessment and its right to “determine . . . the method by which the requisite amount of fees . . . shall be allocated, assessed, and collected.” Instead, the rule as modified will simply provide full transparency to the industry of the details of the assessment calculations if a State racing commission chooses to not pay the assessment.

The changes advanced in the proposed Cost Methodology Rule Modification are intended to enhance the Rule 8500 Series in a manner that is consistent with the Act. The proposed rules are carefully tailored to the unique character of horseracing and to the organizational structure of the Authority.

IV. Legal Authority

This rule is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

V. Date of Effectiveness

If approved by the Commission, this proposed rule modification would be effective 30 days following the date of the Commission’s order approving the modification.

VI. Request for Comments

Members of the public are invited to comment on the Authority’s proposed rule modification. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the

Authority’s filing is available for public inspection on the docket for this matter at <https://www.regulations.gov>.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: “The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission.”²⁸ In other words, the Commission will evaluate the proposed rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission’s rules.

Although the Commission evaluates the Authority’s proposed rule for its consistency with the Act and the Commission’s rules, the Commission may consider broader questions—about the health and safety of horses and jockeys, the integrity of horseraces and wagering on horseraces, and the administration of the Authority itself—in another context: “The Commission . . . may abrogate, add to, and modify the rules of the Authority promulgated in accordance with [the Act] as the Commission finds necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of [the Act] and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of [the Act].”²⁹ The Commission may exercise this rulemaking power on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission about its use of the rulemaking power, they are encouraged to submit a petition requesting that the Commission issue a rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (part 1, subpart D);³⁰ if it does, the petition will be published in the **Federal Register** for public comment. In particular, the petition for a rulemaking must “identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.”³¹

²⁸ 15 U.S.C. 3053(c)(2).

²⁹ 15 U.S.C. 3053(e) (as amended by the Consolidated Appropriations Act, 2023, H.R. 2617, 117th Cong., Division O, Title VII (2022)).

³⁰ 16 CFR 1.31; see FTC, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

³¹ 16 CFR 1.31(b)(3).

VII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 6, 2024. Write “HISA Assessment Methodology Rule Modification” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we strongly encourage you to submit your comments online. To make sure the Commission considers your online comment, you must file it at <https://www.regulations.gov>, by following the instructions on the web-based form.

If you file your comment on paper, write “HISA Assessment Methodology Rule Modification” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex H), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written

request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov>—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and any news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before November 6, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Self-Regulatory Organization's Proposed Rule Language

The following language reflects the Assessment Methodology Rule with the proposed modifications incorporated. A redline version that shows every way in which the previously approved Assessment Methodology Rule would be modified by the proposed rule modification is available as Exhibit B on the docket at <https://www.regulations.gov>.

8500. Methodology for Determining Assessments

8510. Definitions

For purposes of this Rule 8500 Series:

(a) *Annual Covered Racing Starts* has the meaning set forth in Rule 8520(c)(1) through December 31, 2025. Effective January 1, 2026, Annual Covered Racing

Starts shall have the meaning set forth in Rule 8520(c)(2).

(b) *Covered Horseraces* has the meaning set forth in 15 U.S.C. 3051(5).

(c) *Covered Persons* has the meaning set forth in 15 U.S.C. 3051(6).

(d) *Projected Starts* means the number of starts in covered horseraces in the previous twelve (12) months as reported by Equibase, after taking into consideration alterations in the racing calendar of the relevant State(s) for the following calendar year.

(e) *Projected Purses Paid* means: the total amount of purses paid for covered horseraces (including all purse supplements included in the Equibase result chart) in the previous twelve (12) months as reported by Equibase (not including the Breeders' Cup World Championships Races), after taking into consideration alterations in purses paid for the relevant State(s) for the following calendar year.

(f) *Racetrack* has the meaning set forth in 15 U.S.C. 3051(15).

8520. Annual Calculation of Amounts Required

(a) If a State racing commission elects to remit fees pursuant to 15 U.S.C. 3052(f)(2) for any calendar year, the State racing commission shall notify the Authority in writing on or before thirty (30) days from the receipt of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). A State racing commission may be permitted to pay a portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). In such case, the remaining portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b), shall be paid pursuant to Rule 8520(e).

(b) Not later than November 1 of each year, the Authority shall determine and provide to each State racing commission the estimated amount required from each State pursuant to the calculation set forth in Rule 8520(c) below. The estimated amount required from each State shall also include the estimated amount broken down by each Racetrack in the jurisdiction based on each Racetrack's proportionate share in the Projected Purses Paid in covered horseraces in the State over the applicable year (the "Assessment Calculation for each Racetrack"). Notwithstanding the preceding sentence, effective January 1, 2026, the Assessment Calculation for each Racetrack shall be based on each Racetrack's proportionate share in the Projected Starts in covered horseraces in the State over the applicable year.

(c)(1) Upon the approval of the budget for the following calendar year by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C)(i) proportionally by each State's respective percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows: (i) the total amount due from all States pursuant to 15 U.S.C. 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all covered horseraces; then (ii) fifty percent (50%) of the quotient calculated in (c)(1)(i) is multiplied by the quotient of (aa) the relevant State's percentage of the total amount of Projected Purses Paid divided by (bb) the relevant State's percentage of the Projected Starts; then (iii) the sum of (aa) the product of the calculation in (c)(1)(ii) and fifty percent (50%) of the quotient calculated in (c)(1)(i) is multiplied by the Projected Starts in the applicable State. Provided however, that no State's allocation shall exceed ten percent (10%) of the total amount of Projected Purses Paid for covered horseraces as reported by Equibase in the State (not including the Breeders' Cup World Championships Races). All amounts in excess of the ten percent (10%) maximum shall be allocated proportionally to all States that do not exceed the maximum, based on each State's respective percentage of the Annual Covered Racing Starts.

(c)(2) Notwithstanding Rule 8520(c)(1), effective beginning with the 2026 budget of the Authority, upon the approval of the budget of the Authority by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C)(i) proportionally by each State's respective percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows: (1) the total amount due from all States pursuant to 15 U.S.C. 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all covered horseraces; multiplied (2) by the Projected Starts in the applicable State.

(d) Pursuant to 15 U.S.C. 3052(f)(2)(B), a State racing commission that elects to remit fees, shall remit fees on a monthly basis and each payment shall equal one-twelfth (1/12) of the

estimated annual amount required from the State for the following year.

(e) If a State racing commission does not elect to remit fees pursuant to 15 U.S.C. 3052(f)(2) or has remitted a partial payment under Rule 8520(a):

(1) The Authority shall on a monthly basis calculate and notify each Racetrack in the State of the applicable fee per racing start for the next month based upon the following calculations:

(i) Calculate the amount due from the Assessment Calculation for each Racetrack as if the State had elected to remit fees pursuant to 15 U.S.C. 3052(f)(2) (after taking into account any partial payment under Rule 8520(a)).

(ii) Estimate the number of starts in covered horseraces for the applicable Racetrack for the applicable year based on historical data as reported by Equibase and the condition book for the applicable Racetrack (the “Total Estimated Starts”).

(iii) Calculate the number of starts in covered horseraces for the applicable Racetrack in the previous month that the applicable Racetrack conducted covered horseraces as reported by Equibase (the “Monthly Starts”).

(iv) The applicable fee per racing start shall equal (1) the quotient of Monthly Starts divided by Total Estimated Starts; (2) multiplied by the Assessment Calculation for each Racetrack; and (3) such product divided by the Monthly Starts.

(v) If the applicable fee per racing start results in an overpayment or underpayment of the Assessment Calculation for each Racetrack for the applicable year or there are any past due amounts of the Assessment Calculation for each Racetrack, such overpayments, underpayments and/or past due amounts shall be equitably adjusted to account for such differences in the succeeding calendar year.

(2) Each Racetrack shall pay the Assessment Calculation for each Racetrack to the Authority within thirty (30) days from receipt of the applicable invoice.

(3) Pursuant to 15 U.S.C. 3052(f)(3)(B), the applicable fee per racing start for the Assessment Calculation for each Racetrack shall be equitably allocated among covered persons as follows: Racetrack: 50%; Owners: 43.50%; Trainers: 5.00%; and Jockeys: 1.50%. Provided, however, if the horsemen’s group that represents the majority of owners and trainers racing at the applicable Racetrack (the “Horsemen’s Group”) agrees to pay the applicable starter fee for the owners, trainers and jockeys from the purse account or other sources, such payments shall be deemed to be equitably allocated among the

owners, trainers and jockeys. In such case, the Horsemen’s Group and the Racetrack may mutually agree to the allocation of the applicable fee per racing start and such mutually agreed allocation shall be deemed equitably allocated among covered persons.

Notwithstanding anything contained herein to the contrary, if a Racetrack voluntarily assumes a larger percentage of the applicable fee per racing start than set forth in this section, such allocation shall be deemed equitably allocated among covered persons. The Racetrack shall collect the applicable fee per racing start from the applicable covered persons involved with covered horseraces.

(f) Not later than March 1 of each year, the Authority shall calculate the actual number of starts in covered horseraces as reported by Equibase for the previous calendar year and the actual total amount of purses paid (including all purse supplements included in the Equibase result chart) for covered horseraces as reported by Equibase for the previous calendar year and apply such amounts to the calculations set forth in Rule 8520(c) instead of the projected amounts utilized in the calculation of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the relevant calendar year (the “True-Up Calculation”). The allocation due from each State in the current year shall be equitably adjusted to account for any differences between the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the previous year and the True-Up Calculation.

(g) In the event that any court of competent jurisdiction issues an injunction that enjoins the enforcement of the Rule 8500 Series based on the use of purses paid in the Assessment Methodology Rule, the applicable States, Racetracks and Covered Persons, as the case may be, shall pay the allocation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C) and 15 U.S.C. 3052(f)(3)(A)–(C) proportionally by the applicable State’s respective percentage of Projected Starts (the “Alternative Calculation”). In the event that such injunction is reversed by a court of competent jurisdiction and such reversal is final and non-appealable, the Authority shall adjust the allocation due from the applicable States, Racetracks and Covered Persons, as the case may be, in the current calendar year to account for the overpayment or underpayment created by the use of the Alternative Calculation made during the time that the injunction was in force.

(h) All notices required to be given to the Authority pursuant to the Act and these regulations shall be in writing and shall be mailed to the Authority’s address listed on the Authority’s website and emailed to jim.gates@hisaus.org.

(i) Interest shall accrue on all past due amounts hereunder at an interest rate equal to the prime rate published in the Wall Street Journal on the date the payment is due, compounded annually, on such amount from the due date of the payment until such amount is paid.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2024–24567 Filed 10–22–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0082; NIOSH–354]

World Trade Center Health Program; Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), within the CDC, is soliciting public comment on the scope of two upcoming research funding announcements forecasted for FY2026. The World Trade Center (WTC) Health Program is interested in soliciting applications for Cooperative Research Agreements Related to the World Trade Center Health Program (RFA–OH–26–001) and for Assessment and Evaluation of Emerging Health Conditions Relevant to the World Trade Center Health Program (RFA–OH–26–002). Forecasts are published in [grants.gov](https://www.grants.gov). The WTC Health Program supports research to help answer critical questions about potential September 11, 2001-related physical and mental health conditions, as well as research on diagnosing and treating health conditions on the List of WTC-Related Health Conditions (List).

DATES: Comments must be received by November 22, 2024.

ADDRESSES: Comments may be submitted through either of the following two methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov> (follow the instructions for submitting comments), or

• *By Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS C-34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226-1998.

Instructions: All written submissions received in response to this notice must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC-2024-0082; NIOSH-354) for this action. All relevant comments, including any personal information provided, will be posted without change to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C-48, Cincinnati, OH 45226; telephone (404) 498-2500 (this is not a toll-free number); email NIOSHregs@cdc.gov.

SUPPLEMENTARY INFORMATION: Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act) (Pub. L. 111-347, as amended by Pub. L. 114-113, Pub. L. 116-59, Pub. L. 117-328, and Pub. L. 118-31), added Title XXXIII to the Public Health Service Act (PHS Act),¹ establishing the WTC Health Program within HHS. The WTC Health Program provides medical monitoring and treatment benefits for health conditions on the List² to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders). The Program also provides benefits to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

The Zadroga Act also requires that the Program conduct or support research on health conditions that may result from the September 11, 2001, terrorist attacks, addressing the following topics:

- Physical and mental health conditions that may be related to the September 11, 2001, terrorist attacks;
- Diagnosing WTC-related health conditions for which there have been diagnostic uncertainty; and

- Treating WTC-related health conditions for which there have been treatment uncertainty.

For more information on NIOSH-funded research projects related to the September 11, 2001, terrorist attacks, and areas of interest based on the Program's Research Agenda, please visit the WTC Health Program Research web page (<https://www.cdc.gov/wtc/research.html>).

Request for Information

To further relevant WTC Health Program research in FY2026, NIOSH has forecasted two notices of funding opportunities: (1) RFA-OH-26-001: Cooperative Research Agreements Related to the World Trade Center Health Program (<https://grants.gov/search-results-detail/356163>) and (2) RFA-OH-26-002: Assessment and Evaluation of Emerging Health Conditions Relevant to the World Trade Center Health Program (<https://grants.gov/search-results-detail/356164>).

NIOSH seeks to achieve a suitable mix of meritorious research projects which assess the feasibility of new ways to enhance interventions and program evaluations with the potential to improve WTC Health Program treatment and care, and the overall well-being of 9/11-exposed populations. Clinical research areas of interest include methods, interventions, or procedures which can improve the screening, diagnosis, and treatment of WTC-related health conditions and care for those exposed. NIOSH expects that such clinical research outcomes will incorporate relevant epidemiological aspects and use research results to improve treatment and care. Assessment and evaluation of treatment and care programs for WTC-related health conditions and exposed populations are also of interest. Additional details are provided in the forecasts for these proposed funding opportunities (please refer to the links included in this notice).

Specifically, NIOSH seeks input on research priorities with regard to the following questions:

(1) What are the primary research needs for the 9/11-exposed population, such as WTC responders, screening-eligible WTC survivors, or certified-eligible WTC survivors?

(2) What are the primary health concerns that are potentially related to 9/11 exposure, or the treatment thereof, and how do they differ among groups within the 9/11-exposed population?

(3) What emerging health conditions that may be related to 9/11 exposure should be prioritized and addressed?

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2024-24486 Filed 10-22-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Request for Reconsideration Hearing

AGENCY: Office of Child Care; Administration for Children and Families; U.S. Department of Health and Human Services.

ACTION: Notice of request for reconsideration hearing.

SUMMARY: Notice is hereby given to the Inter-Tribal Council of Nevada (ITCN) and interested parties of a reconsideration hearing. The purpose of the hearing is to reconsider the decision of the Administration for Children and Families (ACF), Office of Child Care (OCC) regarding revision to the FY2023-2025 triennial child count submitted by the Inter-Tribal Council of Nevada (ITCN) as part of their triennial plan, submitted on July 1, 2022. Because the child count was submitted as part of ITCN's FY2023-205 triennial plan, ITCN is entitled to request reconsideration to determine "whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations." The sole issue to be reconsidered is OCC's decision to reduce ITCN's child count.

DATES: December 3, 2024, at 9:00 a.m. PST; 12:00 EST.

ADDRESSES: Virtual via Zoom; Interested parties must submit a request for a registration link to Latasha Abney, Director, ACF Office of Grants Policy latasha.abney@acf.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Latasha Abney, Director, ACF Office of Grants Policy latasha.abney@acf.hhs.gov or (202) 401-5324.

SUPPLEMENTARY INFORMATION: By letter dated January 17, 2023, OCC communicated its decision that ITCN had submitted a duplicated child count in an area that overlapped the service area of another CCDF tribal lead agency, and that the area was not within a

¹ Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm-300mm-64. Those portions of the Zadroga Act found in Titles II and III of Public Law 111-347 do not pertain to the WTC Health Program and are codified elsewhere.

² The List of WTC-Related Health Conditions is established in 42 U.S.C. 300mm-22(a)(3)-(4) and 300mm-32(b); additional conditions may be added through rulemaking and the complete List is provided in WTC Health Program regulations at 42 CFR 88.15.

reasonably close geographic proximity to the delineated borders of one of ITCN's member tribes, as required in 45 CFR 98.61(c) and 98.83(b), and as described in the Program Instruction CCDF-ACF-PI-2022-03. As a result, OCC adjusted ITCN's child count downward.

CCDF regulations prescribe that reconsideration shall be conducted by hearing governed by 45 CFR part 99. The ACF Director of Office of Grants Policy, Latasha Abney, is the designated presiding officer. The presiding officer has authority to "modify or waive any rule in [Part 99] upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served." 45 CFR 99.4.

45 CFR 99.15 allows recognition of other individuals or groups as parties "if the issues to be considered at the hearing have directly caused them injury and their interests to be protected by the governing Federal statute and regulations." This **Federal Register** notice serves as notification to other parties who may have interest in this hearing. Individuals or groups desiring to participate as parties should submit a petition in writing to presiding officer, Latasha Abney, at the address above within 15 days of publication of this notice. Such petition shall concisely state (i) Petitioner's interest in the proceeding; (ii) Who will appear for petitioner; (iii) The issues on which petitioner wishes to participate; and (iv) Whether petitioner intends to present witnesses. A copy of the petition must also be served on ITCN Executive Director, Deserea Quintana at dquintana@itcn.org. The presiding officer will promptly determine whether each petitioner has the requisite interest and shall permit or deny participation accordingly.

45 CFR 99.22 allows parties to (a) Appear by counsel or other authorized representative, in all hearing proceedings; (b) Participate in any prehearing conference held by the presiding officer; (c) Agree to stipulations as to facts which will be made a part of the record; (d) Make opening statements at the hearing; (e) Present relevant evidence on the issues at the hearing; (f) Present witnesses who then must be available for cross-examination by all other parties; (g) Present oral arguments at the hearing; and (h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing. 45 CFR 99.23 allows that "The Department, the Lead Agency, and any individuals or groups recognized as parties shall have the right to conduct discovery (including depositions) against

opposing parties," and that Rules 26–37 of the Federal Rules of Civil Procedure shall apply to discovery proceedings.

Pursuant to 45 CFR 99.32, at the conclusion of the hearing and completion of post-hearing briefs, if any, the presiding officer shall certify the record and provide recommended finding and a proposed decision to the Assistant Secretary. Any party will then have 20 days to file exceptions and a supporting brief or statement with the Assistant Secretary. The decision of the Assistant Secretary shall be the final agency action on the matter.

All written material provided by ACF, ITCN, and any other recognized party will be included in the administrative record.

Megan E. Steel,

ACF Certifying Officer. Administration for Children and Families.

[FR Doc. 2024–23441 Filed 10–22–24; 8:45 am]

BILLING CODE 4184–87–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 12³/₈%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2024. This rate is based on the Interest Rates for Specific Legislation, "National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))" and "National Research Service Award Program (42 U.S.C. 288(c)(4)(B))." This interest rate will be applied to overdue

debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2024–24510 Filed 10–22–24; 8:45 am]

BILLING CODE 4150–04–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; Feasibility of Novel Diagnostics for TB in Endemic Countries (FEND for TB) (R01—Clinical Trial Not Allowed).

Date: November 22, 2024.

Time: 10:00 a.m. to 5:00 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 3E72A, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Frank S. De Silva, 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 3E72A, Rockville, MD 20892, (240) 669–5023, fdesilva@niaid.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 18, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–24543 Filed 10–22–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Government Owned Inventions Available for Licensing/Collaboration: Tixocortol for the Prevention or Treatment of SARS-CoV-2 and Other Coronaviruses**

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of the licensing and collaboration opportunity for the inventions listed below, which are owned by an agency of the U.S. Government and are available for licensing in the U.S. to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Inquiries related to this licensing/collaboration opportunity should be directed to: Suna Gulay French, Ph.D., Technology Transfer Manager, NCI, Technology Transfer Center, Email: suna.gulay@nih.gov or Phone: 240-276-7424.

SUPPLEMENTARY INFORMATION: The recent COVID-19 pandemic led to millions of deaths worldwide—presenting an urgent need to develop vaccines and therapeutics against SARS-CoV-2 infections. Although vaccines saved lives by preventing severe disease progression, there remains a need for additional therapeutics that may prevent and/or treat coronavirus infections. The return of symptoms after the use of certain COVID-19 medications demonstrate the need for additional treatment options.

Investigators at the NCI have found a previously approved corticosteroid, tixocortol, to be an inhibitor of the homodimeric main protease (Mpro) of SARS-CoV-2 at an allosteric site of inhibition, cysteine residue 300 (Cys300). Coronaviruses rely on Mpro for proteolytic processing to produce mature forms of the virus—deeming Mpro an excellent target to inhibit SARS-CoV-2 infection. Tixocortol may also be useful against SARS-CoV-1 due to the conservation of Cys300 and in future coronavirus outbreaks. Tixocortol displays inhibitory effect against Mpro when added to cell culture up to 18 hours prior to coronavirus infection, indicating possible preventive use. Tixocortol pivalate was previously manufactured as a spray and would be

easy to apply before entering crowded areas for prevention.

This Notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404.

NIH Reference Number: E-228-2023-0.

Potential Commercial Applications:

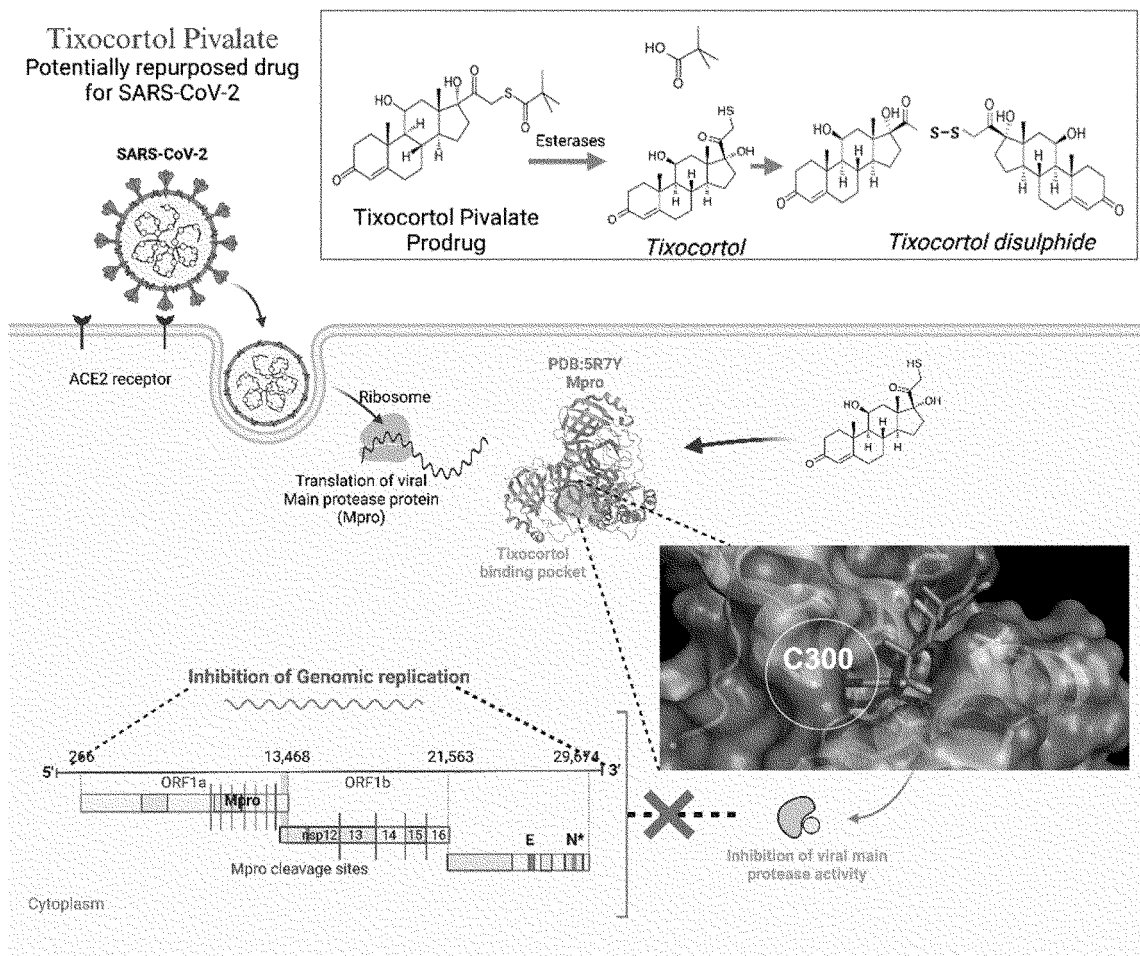
- Treatment of SARS-CoV-2 and SARS-CoV-1 infections
- Preventive of SARS-CoV-2 and SARS-CoV-1 infections and symptoms
- Therapeutic and preventive use against other coronaviruses and respiratory viruses where the allosteric site of inhibition is conserved.

Competitive Advantages:

- Previously developed corticosteroid with a good safety profile
- Non-toxic and non-immunosuppressive
- Nasal delivery
- Potential use against other coronaviruses
- Inhibitory effect against SARS-CoV-2 main protease in cell culture up to 18 hours prior to viral infection

Patent Status: US Provisional Application 65/599,446 filed on November 15, 2023.

Therapeutic Area(s): Infectious Diseases, immune, or inflammation.
Development Stage: Discovery.



Dated: October 18, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer
Center, National Cancer Institute.

[FR Doc. 2024-24565 Filed 10-22-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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; Interaction between ARVs and Hormones in HIV and Coinfections (R01 Clinical Trial Optional).

Date: November 19, 2024.

Time: 10:30 a.m. to 6:00 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 3G34, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Vishakha Sharma, 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 3G34, Rockville, MD 20892, 301-761-7036, vishakha.sharma@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 18, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory
Committee Policy.

[FR Doc. 2024-24542 Filed 10-22-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2018-0001]

Surface Transportation Security Advisory Committee; Meeting

AGENCY: Transportation Security Administration, Department of Homeland Security.

ACTION: Committee management; Notice of open Federal advisory committee meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Surface Transportation Security Advisory Committee (STSAC) on November 21, 2024. Members of the public will be able to participate virtually via Microsoft Teams. The

meeting agenda and information on public participation is provided below under the **SUPPLEMENTARY INFORMATION** section.

DATES: The meeting will take place on Thursday, November 21, 2024. The meeting will begin at 1:00 p.m. and will adjourn at 4:00 p.m. Eastern Standard Time (EST). As listed in the Public Participation section below, requests to attend the meeting, to address the STSAC, and/or for accommodations because of a disability, must be received by November 14, 2024.

ADDRESSES: This meeting will be held in-person at TSA Headquarters, located at 6595 Springfield Center Drive, Springfield, Virginia 20598, and virtually via Microsoft Teams. See Public Participation below for information on how to register to attend the meeting. Attendance information will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Gary Click, Surface Transportation Security Advisory Committee, Designated Federal Officer, U.S. Department of Homeland Security, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, Virginia, 20598, STSAC@tsa.dhs.gov, 571-227-5866.

SUPPLEMENTARY INFORMATION:

Background

Section 1969 of the TSA Modernization Act,¹ established the STSAC to advise, consult with, report to, and make recommendations to the TSA Administrator on surface transportation security matters, including the development, refinement, and implementation of policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security. The STSAC also considers risk-based security approaches in the performance of its duties. While section 1969(f) exempts the STSAC from the Federal Advisory Committee Act,² paragraph 1969(c)(6)(B) requires that TSA hold at least one public meeting each year.

Meeting Agenda

- Welcoming remarks and introductions
- Committee and subcommittee briefings on activities, key issues, and focus areas (cybersecurity information sharing; emergency management and resiliency; insider threat; and security risk and intelligence)
- Public comments

- Closing comments and adjournment

Public Participation

The meeting will be open to the public via Microsoft Teams and attendance may be limited due to Microsoft Teams meeting constraints. Members of the public who wish to participate are asked to register via email by submitting their name, contact number, and affiliation (if applicable) to STSAC@tsa.dhs.gov by November 14, 2024. Attendees will be admitted on a first-to-register basis. Attendance information will be provided upon registration.

Members of the public wishing to present oral or written statements must make advance arrangements by November 14, 2024. The statements must specifically address issues pertaining to the items listed in Meeting Agenda discussed above. Advance requests to present and/or written statements must be submitted via email to STSAC@tsa.dhs.gov. Oral presenters are requested to limit their comments to 3 minutes.

The STSAC and TSA are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section by November 14, 2024.

Dated: October 16, 2024.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2024-24487 Filed 10-22-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038924; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Eastern Washington University, Cheney, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Eastern Washington University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2024.

ADDRESSES: Kate Valdez, NAGPRA Coordinator, Eastern Washington University, 214 Showalter Hall, Cheney, WA 99004, telephone (509) 359-3116, email vvaldez6@ewu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Eastern Washington University, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified. No associated funerary objects are present. In 1951, human remains were removed from Old Man House (45-KP-2 in Kitsap County WA, at Old Man House State Park, by Warren Snyder, as part of a University of Washington Field Expedition. No known individuals were identified. The human remains were transferred to the Burke Museum where they were later accessioned (Burke Accn. 1966-81). No known individuals were identified. Sometime in the early 1990s, these human remains were transferred to the Confederated Tribes of the Colville Reservation, then subsequently transferred in 1992 to Eastern Washington University for identification. In 2004, Washington State Parks and Recreation Commission returned ownership of the land and collections from the 1951 excavation to the Suquamish Indian Tribe of the Port Madison Reservation, WA.

Human remains representing, at least, one individual has been identified. No associated funerary objects are present. In 1949, human remains representing a minimum of one individual were removed from Bainbridge Island, Kitsap County, WA, by Carroll Burroughs and Douglas Osborne, part of a University of Washington field expedition. No known individuals were identified. The human remains were transferred to the Burke Museum where they were accessioned in 1950 (Burke Accn. 3608). No known individuals were identified. Sometime in the early 1990s, these human remains were transferred to the Confederated Tribes of the Colville Reservation, then subsequently transferred in 1992 to Eastern Washington University for identification.

Cultural Affiliation

Based on the information available and the results of consultation, cultural

¹ Division K of the FAA Reauthorization Act of 2018, Public Law 115-254 (132 Stat. 3186; Oct. 5, 2018), codified at 6 U.S.C. 204.

² 5 U.S.C. ch. 10.

affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Eastern Washington University has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Suquamish Indian Tribe of the Port Madison Reservation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after November 22, 2024. If competing requests for repatriation are received, the Eastern Washington University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Eastern Washington University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: October 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–24417 Filed 10–22–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David Carlos Rodriguez, M.D.; Decision and Order

On September 11, 2023, the Drug Enforcement Administration (DEA or

Government) issued an Order to Show Cause (OSC) to David Carlos Rodriguez, M.D. (Registrant), of Lake City, South Carolina. Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 7. The OSC proposed the revocation of Registrant's DEA Certificate of Registration (registration) No. BR6910803, alleging that Registrant has committed such acts as would render his registration inconsistent with the public interest. *Id.* at 3 (citing 21 U.S.C. 823(g)(1), 824(a)(4)).¹

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 5–6 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.² “A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

I. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted.³ Registrant is deemed to have admitted and the Agency finds that from at least January 2018 through at least January 2019, Registrant issued multiple controlled substance prescriptions to five patients that lacked a legitimate

medical purpose and were issued outside the usual course of professional practice. RFAAX 1, at 3, 5.

A. Prescribing to C.R.

Registrant is deemed to have admitted that between May 2018 and December 2018, on approximately a monthly basis, Registrant issued prescriptions for various quantities of oxycodone 30 mg (a Schedule II opioid) to C.R. RFAAX 1, at 3. Registrant issued these controlled substance prescriptions without conducting an appropriate evaluation, without making a proper diagnosis, without providing a therapeutic plan, and without discussing the risks, benefits, and treatment options with the patient. *Id.* Further, during several of C.R.'s visits to Registrant's office, Registrant engaged in sexual conduct with C.R. prior to issuing C.R. the prescriptions. *Id.*

B. Prescribing to K.D.

Registrant is deemed to have admitted that between January 2018 and December 2018, on an approximately monthly basis, Registrant issued prescriptions for various quantities of alprazolam 2 mg (a Schedule IV benzodiazepine), zolpidem tartrate 10 mg (a Schedule IV sedative), and dextroamphetamine-amphetamine 20 mg (a Schedule II stimulant) to K.D. *Id.* at 4. Registrant issued these controlled substance prescriptions without conducting an appropriate evaluation, without making a proper diagnosis, without providing a therapeutic plan, and without discussing the risks, benefits, and treatment options with the patient. *Id.*

C. Prescribing to R.R.

Registrant is deemed to have admitted that between October 2018 and December 2018, on an approximately monthly basis, Registrant issued prescriptions for various quantities of alprazolam 0.5 mg and acetaminophen-hydrocodone 325/10 mg (a Schedule II opioid) to R.R. *Id.* Again, Registrant issued these controlled substance prescriptions without conducting an appropriate evaluation, without making a proper diagnosis, without providing a therapeutic plan, and without discussing the risks, benefits, and treatment options with the patient. *Id.* On several of these occasions, Registrant prescribed opioids with a benzodiazepine, which Registrant is deemed to have admitted is a drug cocktail that is associated with diversion, without adequately documenting his reasoning for issuing

¹ According to Agency records, Registrant's registration expired on April 30, 2024. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68,474, 68,476–68,479 (2019).

² Based on the Government's submissions in its RFAA dated December 5, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the RFAA indicates that on October 16, 2023, Registrant was personally served with the OSC by a DEA Diversion Investigator. RFAA, at 1; RFAAX 2.

³ The Agency need not adjudicate the criminal violations alleged in the instant OSC. *Ruan v. United States*, 142 S. Ct. 2,370 (2022) (decided in the context of criminal proceedings).

prescriptions for an opioid and benzodiazepine.⁴ *Id.* at 4.

D. Prescribing to T.F.

Registrant is deemed to have admitted that between April 2018 and November 2018, on an approximately monthly basis, Registrant issued prescriptions for various quantities of oxycodone 10 mg, oxycodone 15 mg, and alprazolam 1 mg to T.F. *Id.* Registrant also issued a prescription for testosterone 200 mg (a Schedule III steroid) to T.F. *Id.* Registrant issued these controlled substance prescriptions without conducting an appropriate evaluation, without making a proper diagnosis, without providing a therapeutic plan, and without discussing the risks, benefits, and treatment options with the patient. *Id.* Registrant admits that he increased the oxycodone dosage from 10 mg to 15 mg without medical justification. *Id.* As with R.R., on several of these occasions, Registrant prescribed opioids with a benzodiazepine to T.F. without adequately documenting his reasoning. *Id.* at 4–5.

E. Prescribing to B.P.

Between March 2018 and December 2018, on an approximately monthly basis, Registrant issued prescriptions for various quantities of acetaminophen-oxycodone 325/10 mg (a Schedule II opioid), lisdexamfetamine 30 mg (a Schedule II stimulant), and lisdexamfetamine 40 mg to Patient B.P. *Id.* at 5. Registrant issued these controlled substance prescriptions without conducting an appropriate evaluation, without making a proper diagnosis, without providing a therapeutic plan, and without discussing the risks, benefits, and treatment options with the patient. *Id.* Furthermore, Registrant admits that he increased the lisdexamfetamine dosage from 30 mg to 40 mg without medical justification. *Id.*

⁴ The OSC also alleges that Registrant's combined prescribing of an opioid and a benzodiazepine "disregarded the Centers for Disease Control and Prevention (CDC) guidance to 'use particular caution when prescribing opioid pain medication and benzodiazepines concurrently.'" *Id.* (citing *CDC Guidelines for Prescribing Opioids for Chronic Pain*, 71 Morbidity and Mortality Weekly Report, 3, 16 (2022)). The Summary for the CDC Guidance carefully states that its "[r]ecommendations should not be applied as inflexible standards of care across patient populations." *CDC Guidelines for Prescribing Opioids for Chronic Pain*, at 1. Accordingly, the Agency's decision relies not on the CDC Guidelines, but on the Government's Expert, who opined that Registrant had "numerous deviations from the standard of care." RFAAX 1, at 5.

F. Inadequate and Fraudulent Patient Records

In addition to his improper prescribing detailed above, Registrant is deemed to have admitted that on December 11, 2018, in response to a subpoena, his office represented to the South Carolina Department of Labor, Licensing and Regulation Office of Investigations and Enforcement that his office had no documentation for patients C.R., K.D., R.R., T.F., and B.P. *Id.* Registrant is also deemed to have admitted that on August 15, 2019, pursuant to a search and seizure warrant from the South Carolina Department of Health and Environmental Control, his office provided fraudulent and doctored patient records. *Id.*

G. The Government's Expert

According to the OSC, DEA retained an independent medical expert to review information regarding all of the controlled substance prescriptions detailed above, as well as Registrant's patient files for Patients C.R., K.D., R.R., T.F., and B.P. *Id.* Based on Registrant's numerous deviations from the standard of care, the medical expert concluded, and Registrant is deemed to have admitted, that the prescriptions were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Id.* Accordingly, Registrant is deemed to have admitted and the Agency finds that the above-listed controlled substance prescriptions were issued beneath the standard of care. *Id.*

II. Discussion

A. The Five Public Interest Factors

Under the CSA, "[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),⁵ the Government's evidence in support of its *prima facie* case for revocation of Registrant's registration is confined to Factors B and D. *See* RFAAX 1, at 3. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4).

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.*, 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Registrant violated both federal and state law regulating controlled substances. RFAAX 1, at 1–3. Specifically, under federal regulations, a prescription for a controlled substance is valid only if "issued for a legitimate medical purpose

⁵ As to Factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence "does not weigh for or against a determination as to whether continuation of the [registrant's] DEA certification is consistent with the public interest." *Roni Dreszer, M.D.*, 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law "relating to the manufacture, distribution, or dispensing of controlled substances." 21 U.S.C. 823(g)(1)(C). Agency cases have found that "the absence of such a conviction is of considerably less consequence in the public interest inquiry" and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010). Finally, as to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise "other conduct which may threaten the public health and safety." 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a).

As for South Carolina state law, grounds for disciplinary action against a physician include when the physician has: “engaged in dishonorable, unethical, or unprofessional conduct that is likely either to deceive, defraud, or harm the public”; “violated the code of medical ethics adopted by the [State Board of Medical Examiners] or has been found by the [State Board of Medical Examiners] to lack the ethical or professional competence to practice”; “failed to prepare or maintain an adequate patient record of care provided”; “engaged in behavior that exploits the physician-patient relationship in a sexual way”; and “improperly managed medical records, including failure to maintain timely, legible, accurate, and complete medical records.” S.C. Code Ann. § 40–47–110.

Further, South Carolina regulations require that prior to prescribing to a patient, a physician must establish a proper physician-patient relationship, which entails that the physician “make an informed medical judgment based on the circumstances of the situation and on the [physician’s] training and experience”; “personally perform and document an appropriate history and physical examination, make a diagnosis, and formulate a therapeutic plan”; “discuss with the patient the diagnosis and the evidence for it, and the risks and benefits of various treatment options”; and “ensure the availability of the [physician] or coverage for the patient for appropriate follow-up care.” *Id.* § 40–47–113(A).⁶

Here, consistent with Registrant’s admissions, the Agency finds that Registrant repeatedly issued prescriptions for controlled substances without conducting an appropriate evaluation, without making a proper diagnosis, without providing a therapeutic plan, and without discussing the risks, benefits and treatment options with his patients. RFAAX 1, at 3–5. Registrant has also admitted and the Agency finds that Registrant: engaged in sexual conduct with a patient prior to issuing the patient prescriptions for controlled substances; issued a cocktail prescription of opioids and a benzodiazepine to multiple patients on multiple occasions while failing to document his reasoning for so doing; and increased the dosages of controlled

substance prescriptions for multiple patients without medical justification for so doing. *Id.* Based on Registrant’s numerous deviations from the standard of care, DEA’s medical expert concluded, and the Agency finds, that these prescriptions were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Id.* at 5. Registrant has further admitted that he failed to provide adequate patient records to one group of state officials, then provided fraudulent patient records to another group of state officials. *Id.* As such, the Agency finds that Registrant violated 21 CFR 1306.04(a) and South Carolina Code §§ 40–47–110 and 40–47–113.

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Registrant’s registration and thus finds Registrant’s continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Registrant failed to provide any evidence to rebut the Government’s *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds for revocation, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18882, 18910 (2018). To establish that he can be entrusted with registration, a registrant must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62316, 62339 (2012); *see also Michele L. Martinho, M.D.*, 86 FR 24012, 24019 (2021); *George D. Gowder, III, M.D.*, 89 FR 76152, 76154 (2024). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency’s interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33738, 33746 (2021).

Here, Registrant failed to answer the allegations contained in the OSC and did not otherwise avail himself of the opportunity to refute the Government’s case. As such, Registrant has made no representations as to his future compliance with the CSA nor made any demonstration that he can be entrusted with registration. Moreover, the

evidence presented by the Government shows that Registrant violated the CSA, further indicating that Registrant cannot be entrusted.

Accordingly, the Agency will order the revocation of Registrant’s registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BR6910803 issued to David Carlos Rodriguez, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of David Carlos Rodriguez, M.D., to renew or modify this registration, as well as any other pending application of David Carlos Rodriguez, M.D., for additional registration in South Carolina. This Order is effective November 22, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–24575 Filed 10–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1438]

Bulk Manufacturer of Controlled Substances Application: Irvine Labs, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Irvine Labs, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

⁶ South Carolina Code of Regulations § 81–60, entitled Principles of Medical Ethics, states in subsection A that “a physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.”

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before December 23, 2024. Such persons may also file a written request for a hearing on the application on or before December 23, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 26, 2024, Irvine Labs, Inc., 7305 Murdy Circle, Huntington Beach, California 92647–3533, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols ...	7370	I

The applicant plans to manufacture bulk Active Pharmaceutical Ingredients for product development and distribution to DEA-registered researchers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,
Deputy Assistant Administrator.
[FR Doc. 2024–24554 Filed 10–22–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

BRX Pharmacy; Decision and Order

On October 2, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to BRX

Pharmacy of Stafford, Texas (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) A, at 1. The OSC/ISO informed Registrant of the immediate suspension of its DEA Certificate of Registration, Control No. FB7301497, pursuant to 21 U.S.C. 824(d), alleging that Registrant’s continued registration constitutes “‘an imminent danger to the public health or safety.’” *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant’s registration, alleging that Registrant’s continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C.823(g)(1), 824(a)(4)).

The OSC/ISO notified Registrant of its right to file with DEA a written request for hearing. *Id.* at 10–11 (citing 21 CFR 1301.43). The OSC/ISO also notified Registrant that if it requested a hearing but failed to timely file an answer, it would be deemed to have waived its right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43(c)(2), (c)(3), (d)). On October 30, 2023, Registrant timely requested a hearing, however, Registrant failed to answer the allegations of the OSC/ISO. RFAA, at 1; RFAAX C, at 1.¹ The matter was assigned to a DEA Administrative Law Judge (ALJ) who issued an Order for Prehearing Statements that, among other things, reminded Registrant to file a compliant answer within 30 days of receipt of the OSC/ISO.² RFAA, at 1; RFAAX C, at 2. On November 7, 2023, Registrant filed an answer, but the ALJ found it “substantively non-compliant” and ordered Registrant to refile. RFAA, at 2; RFAAX B, at 4–8; RFAAX D, at 1. Registrant ultimately failed to file a compliant answer. RFAA, at 2; RFAAX E, at 2. On November 13, 2023, the Government filed a Motion to Terminate Proceedings based on Registrant’s failure to file an answer. RFAA, at 2.³ Registrant did not file a response. *Id.* On November 27, 2023, the ALJ issued an order finding Registrant in default and terminating proceedings. *Id.*; RFAAX F, at 4–5.

“A default, unless excused, shall be deemed to constitute a waiver of the registrant’s . . . right to a hearing and

¹ Based on the Government’s submissions in its RFAA dated November 29, 2023, the Agency finds that service of the OSC/ISO on Registrant was adequate. Specifically, the Government’s exhibit titled Notice of Service includes a copy of a Form DEA–12 signed by Registrant’s Pharmacist-in-Charge, indicating that Registrant was personally served with the OSC/ISO on October 5, 2023. RFAA, at 1; RFAAX B, at 1, 3.

² Because the 30-day deadline for responding to the OSC/ISO, November 4, 2023, fell on a Saturday, the deadline for responding was November 6, 2023.

³ The Government refers to an “Exhibit G” that is not included in the instant RFAA.

an admission of the factual allegations of the [OSC/ISO].” 21 CFR 1301.43(e). Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 2; see also 21 CFR 1316.67.

I. Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC/ISO are admitted.⁴ Registrant is deemed to have admitted and the Agency finds that it repeatedly dispensed prescriptions in violation of the minimum practice standards that govern pharmacy practice in Texas. RFAAX A, at 4. Specifically, from at least January 2022 through June 2023, Registrant repeatedly filled controlled substance prescriptions that contained multiple red flags of abuse and/or diversion without addressing or resolving the red flags, in violation of both federal and state law. *Id.* at 4–5.

A. Pattern Prescribing, Substances of Abuse, and Strength and Quantity

Texas regulations identify the following prescribing patterns as red flag factors: “[T]he pharmacy dispenses a reasonably discernible pattern of substantially identical prescriptions for the same controlled substances”; “[P]rescriptions . . . are routinely for controlled substances commonly known to be abused drugs”; and “[P]rescriptions for controlled substances are commonly for the highest strength of the drug and/or for large quantities” 22 Tex. Admin. Code §§ 291.29(f)(1), (3), (5); RFAAX A, at 5.

Registrant is deemed to have admitted that it failed to identify and resolve the red flag of pattern prescribing, substances of abuse, and strength and quantity. RFAAX A, at 5. Specifically, between January 2022 and May 2023, Registrant filled prescriptions for oxycodone (a Schedule II opioid) issued by Dr. V.M. to C.B., E.B., K.B., T.H., and O.B. *Id.* Each prescription was for the highest strength of oxycodone, 30 mg, which is known to be frequently abused, and each prescription ranged from 70 to 105 dosage units, approximately 3 or 4 daily doses. *Id.*

⁴ The Agency need not adjudicate the criminal violations alleged in the instant OSC/ISO. *Ruan v. United States*, 142 S. Ct. 2,370 (2022) (decided in the context of criminal proceedings).

Further, between January 2022 and June 2023, Registrant filled prescriptions for hydrocodone-acetaminophen (a Schedule II opioid) issued by Dr. V.M. to C.A., C.S., J.M., J.S., J.M2., and T.S. *Id.* Each prescription was for the highest strength of hydrocodone-acetaminophen, 10/325 mg, which is known to be frequently abused, and the prescriptions ranged from 100 to 104 dosage units, approximately 4 daily doses. *Id.*

Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the prescriptions' red flags of pattern prescribing, substances of abuse, and strength and quantity. *Id.*

B. Controlled Substances Prescribed With Non-Controlled Substances

Texas regulations identify the following prescribing pattern as a red flag factor: "[D]angerous drugs or over-the-counter products [OTC] . . . are consistently added by the prescriber to prescriptions for controlled substances presented to the pharmacy, indicating a lack of individual drug therapy" 22 Tex. Admin. Code § 291.29(f)(6); RFAAX A, at 6.

Registrant is deemed to have admitted that it failed to identify and resolve the red flag of similar prescriptions for controlled substances with OTC products issued by the same practitioner. RFAAX A, at 6. Specifically, between January 2022 and June 2023, Registrant filled prescriptions issued by Dr. V.M. to the eleven individuals listed above for opioids in combination with non-steroidal anti-inflammatory drugs, muscle relaxers, laxatives, and multi-vitamins. *Id.*

Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the red flag of controlled substances being prescribed with non-controlled OTC products. *Id.*

C. Shared Addresses

Texas regulations identify the following prescribing pattern as a red flag factor: "[M]ultiple persons with the same address present substantially similar controlled substance prescriptions from the same practitioner." 22 Tex. Admin. Code § 291.29(f)(11); RFAAX A, at 6.

Registrant is deemed to have admitted that it failed to identify and resolve the red flag of patients with the same address presenting the same, or substantially similar, prescriptions from the same practitioner. RFAAX A, at 6. Specifically, between January 2022 and May 2023, Registrant filled prescriptions for oxycodone 30 mg for

E.B. and K.B., who both share the same address and received their prescriptions from the same practitioner, Dr. V.M. *Id.* Moreover, between January 2022 and May 2023, Registrant filled prescriptions for hydrocodone-acetaminophen 10/325 mg for J.M., J.M2., and T.S., who all share the same address and received their prescriptions from the same practitioner, Dr. V.M. *Id.*

Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the red flag of patients with the same address presenting the same, or substantially similar, prescriptions from the same practitioner. *Id.*

D. Cash Payments

Texas regulations identify the following prescribing pattern as a red flag factor: "[P]ersons consistently pay for controlled substance prescriptions with cash or cash equivalents more often than through insurance." 22 Tex. Admin. Code § 291.29(f)(12); RFAAX A, at 6–7.

Registrant is deemed to have admitted that it failed to identify and resolve the red flag of cash payments, which is a common red flag because it allows a patient to avoid the scrutiny associated with the use of insurance. RFAAX A, at 6–7. Specifically, between January 2022 and June 2023, Registrant routinely accepted cash payments for controlled substance prescriptions, including all of the prescriptions for the eleven individuals described above. *Id.* at 7.⁵

Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the red flag of routinely accepting cash payments for controlled substance prescriptions. *Id.*

E. Prescriber Area of Practice

Texas regulations identify the following prescribing pattern as a red flag factor: "[T]he controlled substance(s) or the quantity of the controlled substance(s) prescribed are inconsistent with the practitioner's area of medical practice." 22 Tex. Admin. Code § 291.29(f)(9); RFAAX A, at 7. Registrant is deemed to have admitted that between January 2022 and June 2023, Registrant repeatedly filled prescriptions for oxycodone and hydrocodone-acetaminophen issued by Dr. V.M., despite Dr. V.M. prescribing outside her family and administrative medicine area of practice. RFAAX A, at

7.⁶ Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the red flag arising from the prescriber's area of practice.

F. Long Distances

Registrant is deemed to have admitted that it repeatedly filled prescriptions without identifying and resolving the red flag of patients traveling long distances to obtain or fill controlled substance prescriptions.⁷ RFAAX A, at 7–8. Specifically, Registrant is deemed to have admitted that it filled prescriptions for at least four individuals, E.B., K.B., C.B., and C.S., whose residences were in "completely opposite areas of the Houston Metropolitan area" from their physician's office (Dr. V.M.) and from their pharmacy (Registrant). *Id.* Registrant further admits that there were several pharmacies closer to both Dr. V.M.'s office and the four individuals' residences. *Id.*

Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the red flag of patients traveling long distances to fill prescriptions for controlled substances. *Id.*

*G. Other Red Flags*⁸

Registrant is deemed to have admitted that it repeatedly filled controlled substance prescriptions when it had reason to doubt the accuracy or legitimacy of the prescriptions, and did so without identifying and resolving this red flag. *Id.* at 8–9. For example,

⁵ Texas regulations further identify as a red flag pattern, "[T]he practitioner's clinic is not registered as, and not exempted from registration as, a pain management clinic by the Texas Medical Board, despite prescriptions by the practitioner presented to the pharmacy indicating that the practitioner is mostly prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone, or any combination of these drugs." 22 Tex. Admin. Code § 291.29(f)(8). The OSC alleges, and it is therefore deemed admitted, that "Dr. [V.M.] is not Board Certified in the area of pain management." RFAAX A, at 6. However, there is not substantial evidence or an admission that the prescriptions issued by Dr. V.M. that were presented to the Registrant were *mostly* for opioids and the other listed controlled substances. Accordingly, the Agency cannot sustain this allegation or find that it presents an additional instance of the prescriber area of practice red flag.

⁷ Though long distances are not specifically mentioned in the Texas regulations, *see infra* II.B., the OSC/ISO notes that the Agency has found that traveling long distances to obtain or fill controlled substance prescriptions is an additional, well-known red flag of abuse and/or diversion. *Id.*

⁸ Although the OSC/ISO refers to the following alleged conduct as "Other Red Flags," these forms of alleged conduct are not specifically listed in the Texas regulations as red flags under 22 Tex. Admin. Code § 291.29(f). *See infra* II.B. Instead, the following alleged conduct constitutes violations of 22 Tex. Admin. Code § 291.29(a)–(b) *See infra* II.B.

⁵ This Decision and Order does not address allegations concerning the high cash payment/high pricing red flag due to the number and egregiousness of the rest of the allegations. *Coconut Grove Pharmacy*, 89 FR 50,372, 50,375 n.20 (2024).

Registrant repeatedly filled prescriptions for individuals who, despite receiving controlled substances for supposedly chronic pain, were filling their prescriptions late. *Id.* at 8. On November 1, 2022, Registrant filled a prescription for oxycodone 30 mg for T.H. approximately seven days after the prescription was written. *Id.* On November 21, 2022, Registrant filled a prescription for oxycodone 30 mg for K.B. approximately eleven days after the prescription was written. *Id.* On February 16, 2023, Registrant filled a prescription for hydrocodone-acetaminophen 10/325 mg for J.S. nine days after the prescription was written. *Id.* Lastly, on March 23, 2023, and April 27, 2023, Registrant filled prescriptions for oxycodone 30 mg for O.B. ten or more days after the prescriptions were written. *Id.*

Moreover, Registrant repeatedly filled prescriptions for controlled substances when there were months when the prescriptions were neither prescribed nor filled. *Id.* Between November 16, 2022, and February 28, 2023, C.A. failed to have a monthly controlled prescription filled, but filled other non-controlled prescriptions at Registrant. *Id.* Between October 18, 2022, and April 12, 2023, J.M2. failed to have a monthly controlled prescription filled. *Id.* at 9. Between November 23, 2022, and March 3, 2023, as well as between March 3, 2023, and June 5, 2023, C.S. failed to have a monthly controlled prescription filled, but filled other non-controlled prescriptions at Registrant. *Id.* Between November 17, 2022, and February 16, 2023, J.S. failed to have a monthly controlled prescription filled, but filled other non-controlled prescriptions at Registrant. *Id.* Between April 28, 2022, and October 18, 2022, as well as between November 22, 2022, and May 4, 2023, J.M. failed to have a monthly controlled prescription filled, but filled other non-controlled prescriptions at Registrant. *Id.* Between February 13, 2023, and May 2, 2023, K.B. failed to have a monthly controlled prescription filled, but filled other non-controlled prescriptions at Registrant. *Id.* Between November 1, 2022, and April 25, 2023, T.H. failed to have a monthly controlled prescription filled. *Id.* Finally, between September 15, 2022, and February 15, 2023, O.B. failed to have a monthly controlled prescription filled at Registrant, while on November 13, 2022, O.B. filled a controlled prescription at another pharmacy. *Id.*

Registrant is also deemed to have admitted that it dispensed prescriptions for high dosages of controlled substances that, in combination with other substances, can cause respiratory

depression and can lead to coma or death. *Id.* Specifically, Registrant dispensed oxycodone and cyclobenzaprine (a non-scheduled muscle relaxer) together to E.B. approximately eleven times. *Id.* Registrant also dispensed oxycodone and either gabapentin (a non-scheduled anticonvulsant) or tizanidine (a non-scheduled muscle relaxer) together to K.B. approximately seven times. *Id.*

Accordingly, the Agency finds that Registrant filled all these prescriptions without first resolving the red flags of late fills, gaps in filling prescriptions, and high dosages of controlled substances in dangerous combinations. *Id.*

H. Expert Review

DEA retained an independent pharmacy expert who concluded that the above prescription data presented multiple red flags that were highly indicative of abuse and diversion. *Id.* Registrant is deemed to have admitted and the Agency finds that these red flags were not resolved by a pharmacist acting in the usual course of professional practice prior to dispensing, and, therefore, that each prescription was filled outside the Texas standard of care. *Id.*

II. Discussion

A. The Five Public Interest Factors

Under the Controlled Substances Act (CSA), “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under [21 U.S.C. 823] inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant]’s experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant]’s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert*

A. Leslie, M.D., 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37,507, 37,508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),⁹ the Government’s evidence in support of its *prima facie* case for revocation of Registrant’s registration is confined to Factors B and D. *See* RFAAX A, at 5. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government’s evidence satisfies its *prima facie* burden of showing that Registrant’s continued registration would be “inconsistent with the public interest.” 21 U.S.C. 824(a)(4).

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.*, 88 FR 1,095, 1,097 (2023); *Kareem Hubbard, M.D.*, 87 FR 21,156, 21,162 (2022). In the current matter, the Government has alleged that Registrant violated both federal and state law regulating controlled substances. RFAAX A, at 2–4.

Specifically, a pharmacist may only fill a prescription that was “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” *Id.* § 1306.04(a). Although “[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner . . . a corresponding responsibility rests with the pharmacist

⁹ As to Factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence “does not weigh for or against a determination as to whether continuation of the [registrant’s] DEA certification is consistent with the public interest.” *Roni Dreszer, M.D.*, 76 FR 19,434, 19,444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law “relating to the manufacture, distribution, or dispensing of controlled substances.” 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR 49,956, 49,973 (2010). Finally, as to Factor E, the Government’s evidence fits squarely within the parameters of Factors B and D and does not raise “other conduct which may threaten the public health and safety.” 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

who fills the prescription.” *Id.* Section 1306.04(a) prohibits “a pharmacist from filling a prescription for a controlled substance when he either knows or has reason to know that the prescription was not written for a legitimate medical purpose.” *Wheatland Pharmacy*, 78 FR 69,441, 69,445 (2013) (internal quotations and alterations omitted); RFAAX 2, at 2. DEA regulations require “pharmacists to identify and resolve suspicions that a prescription is illegitimate.” *Trinity Pharmacy II*, 83 FR 7,304, 7,331 (2018); RFAAX 2, at 2. Further, under federal regulations, a prescription for a controlled substance “may only be filled by a pharmacist, acting in the usual course of his professional practice.” 21 CFR 1306.06.

As for state law, under Texas regulations, “[a] pharmacist may not dispense . . . a controlled substance . . . except under a valid prescription and in the course of professional practice.” Tex. Health & Safety Code § 481.074(a). Regarding the specific standards for a pharmacist filing a new or refill prescription, “[f]or the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient’s medication record. Such review shall at a minimum identify clinically significant: . . . (III) reasonable dose and route of administration; . . . (VI) drug-drug interactions; . . . [and] (X) proper utilization, including overutilization or underutilization.” 22 Tex. Admin. Code § 291.33(c)(2)(A)(i). “Upon identifying any clinically significant conditions [or] situations . . . the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.” *Id.* § 291.33(c)(2)(A)(ii). “Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained.” *Id.* § 291.33(c)(2)(A)(iv); *see also id.* §§ 291.29(a)–(b), 291.33(c)(2)(C) (describing the requirements for documentation).

Regarding “red flag factors” that are “relevant to preventing the non-therapeutic dispensing of controlled substances,” Texas regulations identify the following relevant circumstances as red flags:

(1) the pharmacy dispenses a reasonably discernible pattern of substantially identical prescriptions for the same controlled substances, potentially paired with other drugs, for numerous persons, indicating a lack of

individual drug therapy in prescriptions issued by the practitioner; . . .

(3) prescriptions by a prescriber presented to the pharmacy are routinely for controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants, psychostimulants, and/or cough syrups containing codeine, or any combination of these drugs;

(4) prescriptions for controlled substances by a prescriber presented to the pharmacy contain nonspecific or no diagnoses, or lack the intended use of the drug;

(5) prescriptions for controlled substances are commonly for the highest strength of the drug and/or for large quantities (e.g., monthly supply), indicating a lack of individual drug therapy in prescriptions issued by the practitioner; . . .

(8) the practitioner’s clinic is not registered as, and not exempted from registration as, a pain management clinic by the Texas Medical Board, despite prescriptions by the practitioner presented to the pharmacy indicating that the practitioner is mostly prescribing opioids . . . ;

(9) the controlled substance(s) or the quantity of the controlled substance(s) prescribed are inconsistent with the practitioner’s area of medical practice; . . .

(11) multiple persons with the same address present substantially similar controlled substance prescriptions from the same practitioner; [and]

(12) persons consistently pay for controlled substance prescriptions with cash or cash equivalents more often than through insurance.”

Id. § 291.29(f). Further, under Texas regulations, “[a] pharmacist shall not dispense a prescription drug if the pharmacist knows or should know the prescription drug order is fraudulent or forged.” *Id.*

Here, as found above, Registrant is deemed to have admitted and the Agency finds that Registrant repeatedly filled prescriptions for controlled substances that contained multiple red flags of abuse and/or diversion without addressing or resolving those red flags. RFAAX A, at 5–9. DEA’s pharmacy expert concluded that these red flags were highly indicative of abuse and diversion. *Id.* at 9. Registrant has further admitted that none of the above-referenced controlled substance prescriptions were filled for a legitimate medical purpose in the usual course of professional practice. *Id.* As such, the Agency finds that Registrant violated 21 CFR 1306.04, 1306.06; Texas Health & Safety Code § 481.074; and 22 Texas Administrative Code §§ 291.29, 291.33.

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Registrant’s registration and thus finds Registrant’s continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Registrant failed to provide any evidence to rebut the Government’s *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds for revocation, the burden shifts to the registrant to show why it can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18,882, 18,910 (2018). To establish that it can be entrusted with registration, a registrant must both accept responsibility and demonstrate that it has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62,316, 62,339 (2012) (internal quotations omitted); *see also Michele L. Martinho, M.D.*, 86 FR 24,012, 24,019 (2021); *George D. Gowder, III, M.D.*, 89 FR 76,152, 76,154 (2024). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency’s interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33,738, 33,746 (2021).

Here, Registrant failed to answer the allegations contained in the OSC/ISO and did not otherwise avail itself of the opportunity to refute the Government’s case. As such, Registrant has made no representations as to its future compliance with the CSA nor made any demonstration that it can be entrusted with registration. Moreover, the evidence presented by the Government shows that Registrant violated the CSA, further indicating that Registrant cannot be entrusted.

Accordingly, the Agency will order the revocation of Registrant’s registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FB7301497 issued to BRX Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of BRX Pharmacy to renew or modify this

registration, as well as any other pending application of BRX Pharmacy for additional registration in Texas. This Order is effective November 22, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–24564 Filed 10–22–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Itani Family Pharmacy, PLC; Decision And Order

On June 1, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Itani Family Pharmacy, PLC, of Titusville, Florida (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, Attachment (Attach.) A (hereinafter, OSC/ISO), at 1, 6. The OSC/ISO informed Registrant of the immediate suspension of its DEA registration, No. FI2917702,¹ pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes “an imminent danger to the public health or safety.” *Id.* at 1 (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

The OSC/ISO notified Registrant of its right to file with DEA a written request

for hearing within 30 days after the date of receipt of the OSC/ISO. OSC/ISO, at 5–6 (citing 21 CFR 1301.43(a)). The OSC/ISO also notified Registrant that if it failed to file such a request, it would be deemed to have waived its right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43(c)). The OSC/ISO further notified Registrant that “[d]efault constitutes a waiver of [Registrant's] right to a hearing and an admission of the factual allegations of this [OSC/ISO].” *Id.* (citing 21 CFR 1301.43(e)).

On June 19, 2023, the OSC/ISO was personally served on Registrant's owner and pharmacist-in-charge (PIC), Mr. Basil Itani. RFAAX 1, at 1. On June 30, 2023, a purported request for hearing was filed with the DEA Office of Administrative Law Judges (OALJ) and assigned to the Chief Administrative Law Judge (Chief ALJ). RFAA, at 2. A prehearing conference was then held on July 27, 2023. RFAA, at 2; RFAAX 2, at 2; RFAAX 4, at 1–2.

On September 22, 2023, the Government filed a motion to terminate the proceedings. RFAAX 2, at 4–5. In the motion, the Government represented that after the July 27 prehearing conference, “it came to DEA's attention that Mr. Basil Itani was unaware of any administrative proceedings that had taken place” and that he had “no interest in proceeding forward with the administrative hearing.” *Id.* at 2. The Government further represented that Mr. Itani had informed DEA that he did not have interest in proceeding with a hearing, and “only his father . . . would possess any interest in moving forward with the DEA administrative hearing.” *Id.* After learning this information, Government counsel notified the attorney who filed the hearing request (hereinafter, Counsel) that the Government would file a motion to terminate the proceedings unless Counsel provided the Government with evidence “that [Counsel] represented [Mr. Itani] and his interests in this administrative hearing.” *Id.* The Government never received any response to this request and filed a motion to terminate, arguing that Registrant's hearing request “was made without authority” because Mr. Itani—the only individual who had authority to request a hearing²—did not “provide

express authority to request a hearing on behalf of the pharmacy.” *Id.* at 3–5.

On September 28, 2023, the Chief ALJ ordered Counsel to “provide . . . a notarized power of attorney showing the requisite authority to act as a representative [of Registrant] in these administrative enforcement proceedings.” RFAAX 3 (citing 21 CFR 1316.50). Counsel never responded to the Government's motion to terminate or the Chief ALJ's directive, and never produced any evidence demonstrating that he had authority to represent Registrant. RFAAX 4, at 1, 3. Based on Registrant's failure to respond, on October 5, 2023, the Chief ALJ granted the Government's unopposed motion and terminated proceedings, finding that “there is simply no basis upon which to conclude that [Counsel] has authority to act on behalf of [Registrant], or that the [request for hearing] in this case is valid.” *Id.* at 4.

The Agency agrees with the Chief ALJ. Counsel was given three opportunities to demonstrate that he was authorized to request a hearing for Registrant after the Government learned that Mr. Itani was unaware of the proceedings and had no interest in participating. In response to these opportunities, Counsel remained silent. Indeed, by the time the Chief ALJ terminated the case, it had been over two months since Counsel had communicated with OALJ or made any filings in the matter. RFAAX 4, at 2 nn.3–4. Despite multiple requests, Counsel remained silent and, as the Chief ALJ found, failed to demonstrate that he had the authority to act for Registrant.³ RFAAX 4, at 3–4.

Accordingly, the Agency finds that a valid hearing request was never filed in this matter and, consequently, that Registrant is deemed to be in default.⁴ 21 CFR 1301.43(c)(1). “A default, unless

³ See *supra* note 2. Given the Government's unrefuted representations that Mr. Itani was unaware that a hearing had been requested and that he had no interest in a hearing, the Agency views Counsel's extended silence in the face of multiple requests as sufficient evidence that the hearing request was not filed upon the direction of Mr. Itani, the only person entitled to request a hearing for Registrant.

⁴ Even if the hearing request had been valid, Registrant would be deemed to be in default based on its “fail[ure] to plead . . . or otherwise defend” itself. See 21 CFR 1301.43(c)(3) (“In the event . . . a person who has requested a hearing fails to plead . . . or otherwise defend, said party shall be deemed to be in default and the opposing party may move to terminate the proceeding.”). Here, as the Chief ALJ found, Registrant waived its right to a hearing by failing to respond to the Government's motion to terminate, failing to respond to chambers staff at the Chief ALJ's direction, failing to file exhibits, and failing to file a notarized power of attorney as ordered by the Chief ALJ. RFAAX 4, at 4.

¹ The record represents that this registration expired on November 30, 2023. RFAAX 1, at 1. The fact that a registrant allows its registration to expire during the pendency of an administrative enforcement proceeding does not impact the Agency's jurisdiction or prerogative to adjudicate the OSC/ISO to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68479 (2019).

² The Agency agrees with the Government and the Chief ALJ that the only individual with authority to request a hearing on Registrant's behalf was its owner and PIC, Mr. Itani, as he has been Registrant's only managing member and is the sole signatory and contact on Registrant's registration. RFAAX 2, at 2–4; RFAAX 4, at 3–4; see also *infra* note 3.

excused, shall be deemed to constitute a waiver of [Registrant's] right to a hearing and an admission of the factual allegations of the [OSC/ISO]." 21 CFR 1301.43(e). To date, Registrant has not filed a motion to excuse the default with the Office of the Administrator.

"In the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67." 21 CFR

1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), because Registrant has not timely requested a hearing, nor timely moved to excuse the default, nor filed a motion with the Administrator seeking to excuse the default. *See also id.* § 1316.67.

I. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC/ISO are deemed to be admitted.⁵ 21 CFR 1301.43(e).

Accordingly, Registrant admits that from January 5, 2023, to May 24, 2023, on nine separate occasions, Registrant dispensed controlled substances to a confidential informant (CI) in exchange for cash. OSC/ISO, at 2–4. On each occasion, Registrant admits that the CI did not present any prescription and that Registrant dispensed the controlled substances despite the absence of a prescription. *Id.* Registrant admits that the controlled substances dispensed and the cash received by Registrant on each of the nine occasions are as follows:

Date	Controlled substances	Units (pills)	Cash received
January 5, 2023	Methadone ⁶ 10 mg	200	\$600
January 18, 2023	Oxycodone ⁷ 15 mg	15	1,000
	Morphine ⁸ 15 mg	100	
	Methadone 10 mg	100	
	Methylphenidate ⁹ 5 mg	18	
	Alprazolam ¹⁰ 2 mg	100	
February 2, 2023	Oxycodone 5 mg	500	2,000
	Alprazolam 2 mg	99	
February 15, 2023	Oxycodone 5 mg	500	2,000
	Methadone 10 mg	100	
March 2, 2023	Oxycodone 5 mg	500	2,000
	Alprazolam 2 mg	100	
March 23, 2023	Oxycodone 5 mg	500	2,000
	Methadone 10 mg	100	
April 12, 2023	Oxycodone 5 mg	500	2,000
	Methadone 10 mg	200	
May 4, 2023	Oxycodone 5 mg	500	2,000
	Oxycodone 20 mg	3.5	
	Methadone 10 mg	200	
May 24, 2023	Oxycodone 5 mg	500	2,000
	Methadone 10 mg	200	
Totals		5,035.5	15,600

See OSC/ISO, at 2–4.

II. Discussion

A. The Five Public Interest Factors

Under the Controlled Substances Act (CSA), "[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under [21 U.S.C. 823] inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a). In making the public interest

determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

When making this determination, DEA considers the public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37,507, 37,508 (1993).

⁵ The Agency need not adjudicate the criminal violations alleged in the instant OSC/ISO. *Ruan v. United States*, 597 U.S. 450 (2022) (decided in the context of criminal proceedings).

⁶ Methadone is a schedule II opioid. OSC/ISO, at 3; *see also* 21 CFR 1308.12(c)(15).

⁷ Oxycodone is a schedule II opioid. OSC/ISO, at 3; *see also* 21 CFR 1308.12(b)(1)(xiv).

⁸ Morphine is a schedule II opioid. OSC/ISO, at 3; *see also* 21 CFR 1308.12(b)(1)(ix).

⁹ Methylphenidate is a schedule II stimulant. OSC/ISO, at 3; *see also* 21 CFR 1308.12(d)(4).

¹⁰ Alprazolam is a schedule IV depressant. OSC/ISO, at 3; *see also* 21 CFR 1308.14(c)(2).

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1),¹¹ the Government's evidence in support of its *prima facie* case for sanction is confined to factors B and D. OSC/ISO, at 2. The Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, having reviewed the record, the Agency finds that the Government satisfied its *prima facie* burden of showing that Registrant's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a).

1. Factors B and D

Evidence is considered under public interest factors B and D when it reflects compliance or non-compliance with laws related to controlled substances and experience dispensing controlled substances. *Blue Mint Pharmacy*, 88 FR 75,326, 75,329 (2023).

In the current matter, the Government has alleged that Registrant violated federal and Florida laws regulating controlled substances. OSC/ISO, at 1–6. Specifically, federal law provides that "no controlled substance in schedule II . . . may be dispensed without the written prescription of a practitioner." *Id.* at 2–4 (citing 21 U.S.C. 829(a)). Similarly, it is unlawful in Florida for any person to "sell or dispense¹² drugs . . . without first being furnished with a prescription." OSC/ISO, at 2 (citing Fla. Stat. § 465.015(2)(c)). Furthermore, Florida law provides that "dispensing, or distributing . . . any controlled substance, other than in the course of

the professional practice of pharmacy" is "grounds for denial of a license or disciplinary action." *Id.* (citing Fla. Stat. § 465.016(1)(i)).

Here, Registrant admits that from January 5, 2023, to May 24, 2023, it dispensed over 5,035 controlled substance pills to CI without a prescription, which is a clear violation of federal and Florida law. OSC/ISO, at 2–4. Registrant additionally admits that this misconduct reflects negative experience in dispensing controlled substances. *Id.* at 2.

Specifically, Registrant admits that it dispensed 3,518.5 pills of oxycodone, 1,100 pills of methadone, 299 pills of alprazolam, 100 pills of morphine, and 18 pills of methylphenidate (5,035.5 pills in total) over the course of nine separate occasions. OSC/ISO, at 2–4. Among these, 4,736.5 pills were for controlled substances in schedule II. *Id.* Registrant further admits that no prescriptions were presented on any of the occasions when these controlled substances were dispensed. *Id.* Registrant also admits that it received a total of \$15,600 in cash to dispense these controlled substances without a prescription. *Id.*

Based on Registrant's admissions, the Agency sustains the Government's uncontroverted allegations that Registrant violated federal and Florida laws by dispensing controlled substances without a prescription. OSC/ISO, at 2–4; 21 U.S.C. 829(a); Fla. Stat. §§ 465.015(2)(c), 465.016(1)(i).

In sum, the Agency finds Registrant's continued registration to be inconsistent with the public interest after balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Registrant failed to provide sufficient evidence to rebut the Government's *prima facie* case.

III. Sanction

Where, as here, the Government has established sufficient grounds to revoke Registrant's registration, the burden shifts to the registrant to show why it can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18882, 18910 (2018). "[T]rust is necessarily a fact-dependent determination based" on individual circumstances; therefore, the Agency looks at factors such as "the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior" and "the Agency's interest in deterring similar acts." *Robert Wayne Locklear, M.D.*, 86 FR 33738, 33746 (2021). To be effective, acceptance of responsibility must be unequivocal. *Mohammed Asgar, M.D.*, 83 FR 29569,

29573 (2018). When a registrant has committed acts inconsistent with the public interest, it must both accept responsibility and demonstrate that it has undertaken corrective measures. *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195*, 77 FR 62316, 62339 (2012); *see also George D. Gowder, III, M.D.*, 89 FR 76152, 76154 (2024); *Michele L. Martinho, M.D.*, 86 FR 24012, 24019 (2021).

Here, Registrant did not request a hearing or otherwise avail itself of the opportunity to refute the Government's case. RFAA, at 3; 21 CFR 1301.43(c)(1), (e), (f)(1). As such, the record does not contain any representations from Registrant demonstrating future compliance with the CSA, trustworthiness regarding the responsibilities of holding a DEA registration, acceptance of responsibility, or remedial measures.

Accordingly, in light of Registrant's default and the lack of mitigating evidence, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FI2917702 issued to Itani Family Pharmacy, PLC. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Itani Family Pharmacy, PLC, to renew or modify this registration, as well as any other pending application of Itani Family Pharmacy, PLC, for additional registration in Florida. This Order is effective November 22, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,
Federal Register Liaison Officer, Drug
Enforcement Administration.

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¹¹ As to factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence "does not weigh for or against a determination as to whether continuation of the [Registrant's] DEA certification is consistent with the public interest." *Roni Dreszer, M.D.*, 76 FR 19,434, 19,444 (2011). As to factor C, there is no evidence in the record that Registrant has been convicted of any federal or state law offense "relating to the manufacture, distribution, or dispensing of controlled substances." 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, "the absence of such a conviction is of considerably less consequence in the public interest inquiry" and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR 49,956, 49,973 (2010). As to factor E, the Government's evidence fits squarely within the parameters of factors B and D and does not raise "other conduct which may threaten the public health and safety." 21 U.S.C. 823(g)(1)(E). Accordingly, factor E does not weigh for or against Registrant.

¹² Florida law defines "dispense" as "the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer." Fla. Stat. § 465.003(13). The CSA defines "dispense" as the "deliver[y] [of] a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner . . ." 21 U.S.C. 802(10). The CSA defines "deliver" and "delivery" as "the actual, constructive, or attempted transfer of a controlled substance . . ." *Id.* § 802(8).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dale Fitzpatrick, M.D.; Decision and Order

On July 19, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Dale Fitzpatrick, M.D., of Modesto, CA (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BF0553455, alleging that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of California, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).¹

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.² "A default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67." *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c),

(f), 1301.46. RFAA, at 3; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, effective January 6, 2023, Registrant surrendered his California physician and surgeon license. RFAAX 2, at 1. According to California online records, of which the Agency takes official notice, Registrant's California physician and surgeon license remains surrendered.³ California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a physician in California, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371, 71,372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).⁴

³ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

⁴ This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional

According to California statute, "dispense" means "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Cal. Health & Safety Code § 11010 (West 2024). Further, a "practitioner" means a person "licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state." *Id.* § 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice as a physician in California. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant currently lacks authority to practice as a physician in California and, therefore, is not currently authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BF0553455 issued to Dale Fitzpatrick, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Dale Fitzpatrick, M.D., to renew or modify this registration, as well as any other pending application of Dale Fitzpatrick, M.D., for additional registration in California. This Order is effective November 22, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 15, 2024, by Administrator

practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, D.O.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

¹ According to Agency records, Registrant's registration expired on September 30, 2024. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68,474, 68,476–79 (2019).

² Based on the Government's submissions in its RFAA dated April 18, 2024, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that on August 10, 2023, the OSC was successfully delivered to Registrant's registered address, though an individual who was not the Registrant signed to confirm the receipt of the OSC. RFAAX 3, at 2, Attachment A. Further, the DI's Declaration indicates that on August 29, 2023, the OSC was successfully delivered to Registrant's home address, however, it was never signed for. *Id.* at 2, Attachment B. Finally, the DI's Declaration indicates that on December 8, 2023, the OSC was emailed to Registrant's registered email address. *Id.* at 2, Attachment C.

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

Heather Achbach,
Federal Register Liaison Officer, Drug Enforcement Administration.
[FR Doc. 2024–24570 Filed 10–22–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1441]

Importer of Controlled Substances
Application: Mylan Technologies Inc

AGENCY: Drug Enforcement Administration, Justice.
ACTION: Notice of application.

SUMMARY: Mylan Technologies Inc to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 22, 2024. Such persons may also file a written request for a hearing on the application on or before November 22, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All

requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 8, 2024, Mylan Technologies Inc., 110 Lake Street, Saint Albans, Vermont 05478–2266, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company’s own domestically manufactured FDF to foreign markets. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,
Deputy Assistant Administrator.
[FR Doc. 2024–24557 Filed 10–22–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1440]

Importer of Controlled Substances
Application: Halo Pharmaceutical Inc.

AGENCY: Drug Enforcement Administration, Justice.
ACTION: Notice of application.

SUMMARY: Halo Pharmaceutical Inc. to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION**

listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 22, 2024. Such persons may also file a written request for a hearing on the application on or before November 22, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 11, 2024, Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981–1030, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I

The company plans to import the listed controlled substance to support formulation development and use in clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–24560 Filed 10–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1439]

Importer of Controlled Substances Application: Irvine Labs, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Irvine Labs, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 22, 2024. Such persons may also file a written request for a hearing on the application on or before November 22, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement

Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 26, 2024, Irvine Labs, Inc., 7305 Murdy Circle, Huntington Beach, California 92647–3533, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide.	7315	I
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols ...	7370	I
Mescaline	7381	I
Peyote	7415	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import bulk substances to support internal research, clinical trials, analytical purposes, and distribution to their customers. In reference to drug codes Marihuana Extract (7350), Marihuana (7360) and Tetrahydrocannabinols (7370) the company plans to import a raw plant material and extracts. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–24553 Filed 10–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On October 17, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Mexico in the lawsuit entitled *United States of America and New Mexico Environment Department v. Hilcorp Energy Company*, Civil Action No. 1:24-cv-01055.

In this action, the United States, on behalf of the U.S. Environmental Protection Agency, and the New Mexico

Environment Department filed a complaint alleging that Hilcorp Energy Company (“Defendant”) violated the Clean Air Act, the New Mexico Air Quality Control Act, and the implementing regulations for 192 well completions in New Mexico by failing to comply with applicable well completion emissions control requirements, which resulted in excess emissions of greenhouse gases and volatile organic compounds. The complaint seeks an Order enjoining Defendant from further violating applicable requirements and requiring Defendant to remedy, mitigate, and offset the harm to public health and the environment caused by the violations and to pay a civil penalty.

Under the proposed settlement, Defendant agrees to pay a civil penalty of \$9,400,000 (of which \$4,700,000 is to be paid to the United States and \$4,700,000 is to be paid to the State of New Mexico).

In addition, the settlement requires the Defendant to ensure ongoing compliance with all applicable regulatory requirements for all of its future well completions in New Mexico and hire an independent third party to verify compliance.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and New Mexico Environment Department v. Hilcorp Energy Company*, D.J. Ref. No. 90–5–2–1–12445. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the proposed consent decree, you may request assistance by email or by mail

to the addresses provided above for submitting comments.

Thomas Carroll,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 2024–24532 Filed 10–22–24; 8:45 am]
BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–ONEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New collection; Clearance for Community Relations Service Program Feedback and Knowledge Gain (L1/L2)

AGENCY: Community Relations Service, Department of Justice.
ACTION: 30-Day notice.

SUMMARY: The Community Relations Service (CRS), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until November 22, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Melody Diegor Caprio, CRS/DOJ, at 202–353–1806 or melody.caprio@usdoj.gov located at 145 N St. NE, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on August 19, 2024, 89 FR 67106, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Community Relations Service, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: Over the next three years, CRS and its evaluation contractor, Mathematica, anticipate collecting participant feedback for assessing ongoing programs across several areas within community outreach. The purpose of these collections is to gather feedback from participants who attended CRS programs and to use that information to assess participant satisfaction and implementation of the programs. The work may entail redesigning and/or modifying existing

programs based upon received feedback. CRS envisions using surveys via both electronic data collection and paper instruments.

Overview of This Information Collection

1. Type of Information Collection: New collection.
2. The Title of the Form/Collection: Clearance for Community Relations Service Program Feedback and Knowledge Gain (L1/L2).
3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Agency form number is 1190. The applicable component within the Department of Justice is the Community Relations Service.
4. Affected public who will be asked or required to respond, as well as the obligation to respond: Participants of CRS programs in relevant jurisdictional fields; individuals; facilitators; state and local law enforcement, government officials, faith leaders, and community leaders; students; school administrators; and representatives of advocacy organizations. The obligation to respond is voluntary.
5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: We estimate that up to 1,435 individuals will be involved in the data collection annually over the three-year clearance period. The average time per response for the L1/L2 program feedback surveys is 10 minutes per response.
6. An estimate of the total annual burden (in hours) associated with the collection: The total annual burden hours for this collection is 120 hours.
7. An estimate of the total annual cost burden associated with the collection, if applicable: \$2,772.35.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
L1/L2 program feedback					
L1/L2 program feedback surveys	1,435	1/annually	1,435	10	120
Unduplicated totals	1,435		1,435		120

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: October 18, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-24549 Filed 10-22-24; 8:45 am]

BILLING CODE 4410-17-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Vertical Tandem Lifts for Marine Terminals

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 22, 2024.

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: Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Vertical Tandem Lifts (VTLs) Standard requires employers to develop, implement, and maintain a written plan for transporting vertically connected containers in the longshoring and marine terminal industries. The written plan is necessary for the safe transport of VTLs in the marine terminal where factors affect the stability of a VTL which has a higher center of gravity than a single container. For additional substantive information about this ICR, see the related notice published in the

Federal Register on August 12, 2024 (89 FR 65678).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OSHA.

Title of Collection: Vertical Tandem Lifts for Marine Terminals.

OMB Control Number: 1218-0260.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 1,210.

Total Estimated Number of Responses: 75,243.

Total Estimated Annual Time Burden: 22,932 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-24481 Filed 10-22-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0121]

Proposed Extension of Information Collection: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

DATES: All comments must be received on or before December 23, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2024-0026.

- *Mail/Hand Delivery:* DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**I. Background***A. Legal Authority*

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal and nonmetal mines.

B. Information Collection

In order to fulfill the statutory mandates to promote miners' health and safety, MSHA requires the collection of information under the information collection request entitled Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines. The information collection is intended to ensure that mine roof, face, and rib are adequately supported and that ground control systems are effective.

Accidents involving falls of mine roof, face, and rib in underground mines or falls of highwall in surface mines, historically, have been among the leading causes of injuries and deaths. Preventing or controlling roof, face, or rib falls is uniquely difficult because of the variety of conditions encountered in mines that can affect the stability of various types of strata. Additionally, the nature of the forces affecting ground stability at any given operation and time are constantly changing. Roof and rock bolts and accessories are integral parts of ground control systems and are used to prevent the fall of roof, face, and rib. Advancements in the technology of roof and rock bolts and accessories have aided in reducing the hazards associated with falls of roof, face, and rib.

1. Providing Manufacturers' Certifications

It is necessary to ensure that roof and rock bolts and accessories are up to safety standards as they are imperative to protecting miners' safety and health. Under 30 CFR 56.3203, 57.3203 and 75.204, the quality of roof and rock bolts and accessories and their installation are addressed.

These provisions incorporate by reference the American Society for Testing and Materials (ASTM) F432–95

entitled "Standard Specification for Roof and Rock Bolts and Accessories."

This ASTM standard, a consensus standard used throughout the United States, contains specifications for the chemical, mechanical, and dimensional requirements for roof and rock bolts and accessories used for ground support systems. These regulations ensure the quality and effectiveness of roof and rock bolts and accessories and, as technology evolves, allow for the use of new materials which are proven to be reliable and effective in controlling the mine roof, face, and rib.

1–1. MNM Mines

Roof and rock bolts and accessories must be certified to the ASTM standard, or otherwise tested in similar circumstances to the ones in which they are being used. Certifications of purchase or tests must be made available upon request.

Under 30 CFR 56.3203(a) and 57.3203(a), mine operators of MNM mines, both surface and underground, must obtain a certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable ASTM specifications, and that the manufacturer's certification is made available to an authorized representative of the Secretary and to the representative of miners.

Under 30 CFR 56.3203(h) and 57.3203(h), if mine operators of MNM mines use other tensioned and non-tensioned fixtures and accessories for ground control that are not addressed by the applicable ASTM standards listed in 30 CFR 56.3203(a) and 57.3203(a), test methods must be established by the mine operator and used to verify their ground control effectiveness.

Under 30 CFR 56.3203(i) and 57.3203(i), the mine operator must certify that the tests developed under 30 CFR 56.3203(h) and 57.3203(h) were conducted and such certifications be made available to an authorized representative of the Secretary.

1–2. Coal Mines

Under 30 CFR 75.204(a), mine operators of underground coal mines must obtain a certification from the manufacturer that roof bolts and accessories are manufactured and tested in accordance with the applicable ASTM specifications, and that the manufacturer's certification is made available to an authorized representative of the Secretary and to the representative of miners.

2. Bolt Tension Measurements of Coal Mines

Bolt tension must be adjusted so that tension is not too high or too low for anchored roof bolts. Therefore, tension must be measured, and mine operators must take corrective action if the tension on roof bolts is not optimal.

Under 30 CFR 75.204(f)(5), in working places from which coal is produced during any portion of a 24-hour period, the actual torque or tension on at least one out of every 10 previously installed mechanically anchored tensioned roof bolts must be measured from the outby corner of the last open crosscut to the face in each advancing section. The mine operator must take corrective action if the majority of the bolts measured either:

- (a) Do not maintain at least 70 percent of the minimum torque or tension specified in the roof control plan, 50 percent if the roof bolt plates bear against wood; or
- (b) Have exceeded the maximum specified torque or tension by 50 percent.

Under 30 CFR 75.204(f)(6), mine operators of a coal mine or a person designated by the operator must certify by signature and date that the measurements required by 30 CFR 75.204(f)(5) have been made. This certification must be maintained for at least one year and must be made available to an authorized representative of the Secretary and representatives of miners.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Sign in at the receptionist’s desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0121.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 484.

Frequency: On occasion.

Number of Annual Responses: 79,167.

Annual Time Burden: 740 hours.

Annual Other Burden Costs: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–24500 Filed 10–22–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Information Collection; Petitions for Modification of Mandatory Safety Standards

[OMB Control No. 1219–0065]

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Petitions for Modification of Mandatory Safety Standards.

DATES: All comments must be received on or before December 23, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2024–0028.

- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authority

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal and nonmetal mines.

B. Information Collection

In order to fulfill the statutory mandates to promote miners’ health and safety, MSHA requires the collection of information under the information collection request entitled Petitions for Modification of Mandatory Safety Standards. The information collection is intended to ensure the merits of the petition for the purpose of deciding whether or not to grant it and, if granted, whether there is a need for any additional terms or conditions.

If a mine operator, or a representative of miners at a mine, wishes to modify the requirements of an existing MSHA safety standard to achieve the purpose of the standard by means different than those required by the standard, they may petition the requirement. The petitioning party would be responsible for proposing an alternative that is proven to be at least as safe for miners as the mandatory requirement. MSHA will grant a petition for modification if the agency determines that the requested alternative provides miners at least the same level of protection as the existing standard. Under 30 CFR part 44, the procedures and rules of practice are set forth to govern petitions for modification of mandatory safety standards filed under section 101(c) of the Mine Act.

1. Prepare and File Petition for Modification

In order to meet the requirements of the petition for modification, mine operators, or representative of the miners, must file the petition with MSHA and serve a copy of the petition to the other party, either the representative of the miners, or the mine operator. The petition must include a statement about the modification, proposed alternative, or that the requirement diminishes the safety of miners at the site and any facts

substantiating that the petition is warranted.

Under 30 CFR 44.10, a petition for modification of the application of a mandatory safety standard under section 101(c) of the Mine Act may be filed only by the mine operator of the affected mine or any representative of the miners at such mine. All petitions must be in writing and must be filed with the Director, Office of Standards, Regulations, and Variances. If the petition is filed by a mine operator, a copy of the petition must be served by the mine operator upon a representative of miners at the affected mine. If the petition is filed by a representative of the miners, a copy of the petition must be served by the representative of miners upon the mine operator. Service must be accomplished personally or by registered or certified mail, return receipt requested.

Under 30 CFR 44.11(a), a petition for modification must contain:

- (i) The petitioner's name and address;
- (ii) The mailing address and mine identification number of the mine or mines affected;
- (iii) The mandatory safety standard to which the petition is directed;
- (iv) A concise statement of the modification requested and whether the petitioner proposes to establish an alternate method in lieu of the mandatory safety standard, or alleges that application of the standard will result in diminution of safety to the miners affected, or requests relief based on both grounds;
- (v) A detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and,
- (vi) Identification of any representative of the miners at the affected mine, if the petitioner is a mine operator.

2. Post Petition for Modification

It is important for all miners to be aware of potential modifications. Under 30 CFR 44.9, a mine operator must, when there is no representative of miners, post a copy of each petition for modification concerning the mine on the mine bulletin board and must maintain the posting until a ruling on the petition becomes final.

3. MSHA Publish Public Notice of Petition for Modification

Based on who initiated the modification, MSHA will notify all applicable parties and publish the modification for public awareness. Under 30 CFR 44.12(a), within 15 days from the filing of a petition for modification, MSHA will give notice of

the petition to each known representative of miners or the operator of the affected mine, as appropriate, and shall publish notice of the petition in the **Federal Register**.

4. MSHA Publishing Final Action Granting Petition for Modification

Final decisions on modifications, including any reasoning, are published so that all stakeholders are aware of the outcome. Under 30 CFR 44.5(a), every final action granting a petition for modification must be published in the **Federal Register**. Every such final action published must specify the statutory grounds upon which the modification is based and a summary of the facts which warranted the modification.

5. Post Final Action Granting Petition for Modification

The final decision must be made available to miners, once available. Under 30 CFR 44.5(b), every final action or a summary thereof granting a petition for modification must be posted by the operator on the mine bulletin board at the affected mine and remain posted as long as the modification is effective. If a summary of the final action is posted on the mine bulletin board, a copy of the full decision must be kept at the affected mine office and made available to the miners.

The process of preparing, submitting, reviewing, and granting petitions for a petition for modification is:

Step 1: A mine operator, a representative of miners, or a third party prepares and files a petition for modification to MSHA.

Step 2: The mine operator or representative of miners serves petition for modification to the other party.

(a) If the petition is filed by a mine operator, a copy of the petition must be served by the mine operator upon a representative of miners at the affected mine.

(b) If the petition is filed by a representative of the miners, a copy of the petition must be served by the representative of miners upon the mine operator.

Step 3: The mine operator posts a copy of the petition for modification on the mine bulletin board.

Step 4: MSHA conducts an initial review.

Step 5: MSHA publishes a notice of the petition for modification in the **Federal Register**.

Step 6: MSHA conducts an investigation.

Step 7: MSHA reviews the petition for modification.

Step 8: MSHA takes a final action and determines whether to grant a petition

for modification. If granted, MSHA publishes a final action in the **Federal Register**.

Step 9: The mine operator posts final action granting a petition for modification at the mine bulletin board.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection entitled Petitions for Modification of Mandatory Safety Standards. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL-MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Petitions for Modification of Mandatory Safety Standards. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this

information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0065.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 46.

Frequency: On occasion.

Number of Annual Responses: 164.

Annual Time Burden: 1,501 hours.

Annual Other Burden Costs: \$24,830.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–24496 Filed 10–22–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0135]

Proposed Extension of Information Collection; Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Health Standards for Diesel Particulate Matter.

DATES: All comments must be received on or before December 23, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

• *Federal E-Rulemaking Portal:*

<https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2024–0032.

• *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

• MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authority

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

B. Information Collection

In order to fulfill the statutory mandates to promote miners' health and safety MSHA requires the collection of information under the information collection request entitled Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines). The information collection addressed by this notice is intended to ensure diesel particulate matter levels in metal and nonmetal (MNM) mines are kept at acceptable levels and do not expose miners to explosive or other hazardous conditions.

Diesel particulate matter (DPM) is a carcinogen that consists of tiny particles

present in diesel engine exhaust that can penetrate into the lungs. Despite ventilation, the confined underground mine work environment may contribute to significant concentrations of particles produced by equipment used in the mine. Underground miners are exposed to higher concentrations of DPM than any other occupational group. As a result, they face a greater risk of developing diseases such as lung cancer, heart failure, serious allergic responses, and other cardiopulmonary problems.

The DPM regulations established a permissible exposure limit (PEL) of 160 micrograms of total carbon per cubic meter of air ($\mu\text{g}/\text{m}^3$), which is a surrogate for measuring a miner's exposure to DPM. Under 30 CFR 57.5060(b)(3), a miner's personal exposure to DPM in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of $160_{\text{TC}} \mu\text{g}/\text{m}^3$. Other DPM regulations include a number of other requirements for the protection of miners' health. The DPM regulations contain information collection requirements for underground MNM mine operators under 30 CFR 57.5060, 57.5065, 57.5066, 57.5070, 57.5071, and 57.5075.

1. Provide Miner With Medical Determination for Respirator Use

1–1. Respirator Training and Fitting

Due to the potential safety and health risks associated with exposure to DPM, controls must be used effectively to reduce exposure below the PEL. However, if exposure levels of DPM cannot feasibly be decreased below the PEL, they must be lowered as much as possible, and respiratory protection must be provided as a supplement to protect miners.

Under 30 CFR 57.5060(d), mine operators must install, use, and maintain feasible engineering and administrative controls to reduce a miner's exposure to or below the applicable DPM PEL. When controls do not reduce a miner's DPM exposure to the PEL, controls are infeasible, or controls do not produce significant reductions in DPM exposures, controls must be used to reduce the miner's exposure to as low a level as feasible and must be supplemented with respiratory protection in accordance with 30 CFR 57.5005(a), (b), and paragraphs (d)(1) through (d)(8) of this section.

When respiratory protection is required, mine operators must establish a respiratory protection program that complies with MSHA's respiratory

protection standards for control of airborne contaminants at MNM mines in 30 CFR 57.5005(a) and (b). These require that whenever respiratory protective equipment is used a mine operator must have a program for selection, maintenance, training, fitting, supervision, and cleaning of respiratory protective equipment. Respiratory protective equipment must meet the requirements in the DPM standard under paragraphs (d)(1) and (d)(2). The information collection is covered under a currently approved request, OMB Control Number 1219–0048, Respirator Program Records.

1–2. Medical Evaluation

Miners must seek medical approval of the ability to safely wear respiratory protection before they work in an area of the mine that requires respiratory protection. This ensures that miners are safely and effectively able to wear respiratory protection.

Under 30 CFR 57.5060(d)(3), mine operator must provide a confidential medical evaluation by a physician or other licensed health care professional (PLHCP), at no cost to the miner, to determine the miner's ability to use a respirator before the miner is required to be fit tested or to use a respirator at the mine.

Under 30 CFR 57.5060(d)(3), if the PLHCP determines that the miner cannot wear a negative pressure respirator, mine operators must make certain that the PLHCP evaluates the miner's ability to wear a powered air purifying respirator (PAPR).

Under 30 CFR 57.5060(d)(4), mine operators must provide the miner with an opportunity to discuss their evaluation results with the PLHCP before the PLHCP submits the written determination to the mine operator regarding the miner's ability to wear a respirator. If the miner disagrees with the evaluation results of the PLHCP, the miner may submit within 30 days additional evidence of his or her medical condition to the PLHCP.

1–3. Written Medical Determination Examine Tagged Diesel Equipment

Miners must undergo reevaluations if the work conditions change and there is reason to believe that a miner may no longer be able to safely wear a respirator. Under 30 CFR 57.5060(d)(5), mine operators must obtain a written determination from the PLHCP regarding the miner's ability to wear a respirator and the mine operators must ensure that the PLHCP provides a copy of the determination to the miner.

Under 30 CFR 57.5060(d)(6), a miner must be reevaluated when mine

operators have reason to believe that conditions have changed which could adversely affect the miner's ability to wear the respirator. Such conditions may include a reassignment of the miner to a new task requiring a significant increase in physical exertion, or the miner is assigned to work at a lower level of a deep mine where conditions such as heat impose greater physiological stress.

Under 30 CFR 57.5060(d)(7), upon written notification that the PLHCP has determined that the miner is unable to wear a respirator, including a PAPR, the miner must be transferred to work in an existing position in an area of the same mine where respiratory protection is not required. The miner must be transferred within 30 days of the final determination by the PLHCP.

Under 30 CFR 57.5060(d)(8), mine operators must maintain a record of the identity of the PLHCP and the most recent written determination of each miner's ability to wear a respirator for the duration of the miner's employment plus six months.

2. MSHA DPM Sample of Working Area

Under 30 CFR 57.5061, MSHA will use a single sample collected and analyzed in accordance with the requirements of this section as an adequate basis for a determination of noncompliance with the DPM limit. The Secretary will collect samples of DPM by using a respirable dust sampler equipped with a submicrometer impactor and analyze the samples for the amount of elemental carbon using the method described in NIOSH Analytical Method 5040.

3. Retain Fuel Purchase Record

Under 30 CFR 57.5065(a), diesel fuel used to power equipment in underground areas must not have a sulfur content greater than 0.05 percent. The operator must retain purchase records that demonstrate compliance with this requirement for one year after the date of purchase.

4. Miner Tag Diesel Equipment

Under 30 CFR 57.5066(b)(1), mine operators must authorize each miner operating diesel-powered equipment underground to affix a visible and dated tag to the equipment when the miner notes evidence that the equipment may require maintenance in order to comply with the maintenance standards specified in 30 CFR 57.5066(a). The term evidence means visible smoke or odor that is unusual for that piece of equipment under normal operating procedures, or obvious or visible defects

in the exhaust emissions control system or in the engine affecting emissions.

5. Retain Log of Equipment Maintenance

Any diesel-powered equipment requiring maintenance must be promptly inspected by an authorized person, and a log of inspections and any corrective action must be maintained. Under 30 CFR 57.5066(b)(2), mine operators must ensure that any tagged equipment is promptly examined by a person authorized to maintain diesel equipment, and that the affixed tag not be removed until the examination has been completed.

Under 30 CFR 57.5066(b)(3), mine operators must retain a log of any equipment tagged pursuant to this section. The log must include the date the equipment is tagged, the date the equipment is examined, the name of the person examining the equipment, and any action taken as a result of the examination. The operator must retain the information in the log for one year after the date the tagged equipment was examined.

6. Retain Record for Competent Maintenance Personnel

Under 30 CFR 57.5066(c), persons authorized by a mine operator to maintain diesel equipment that operates at any time in underground areas as covered by paragraph (a) of this section must be qualified, by virtue of training or experience, to ensure that the maintenance standards of paragraph (a) of this section are observed. An operator must retain appropriate evidence of the competence of any person to perform specific maintenance tasks in compliance with those standards for one year after the date of any maintenance, and upon request must provide the documentation to the authorized representative of the Secretary.

7. Retain Record of DPM Health Training

Training is an important component of safety and health for all miners. Therefore, all miners who are expected to be exposed to DPM must undergo annual training. Under 30 CFR 57.5070(a), mine operators must provide annual training to all miners at a mine covered by this part who can reasonably be expected to be exposed to diesel emissions on that property. The training must include—

- The health risks associated with exposure to diesel particulate matter;
- The methods used in the mine to control diesel particulate matter concentrations;

- Identification of the personnel responsible for maintaining those controls:

- Actions miners must take to ensure the controls operate as intended:

Under 30 CFR 57.5070(b), mine operators must retain a record at the mine site of the training required by this section for one year after completion of the training.

8. Post and Deliver Diesel Particle Sampling

Mine operators are responsible for monitoring DPM levels to ensure miners are not exposed to levels that exceed the PEL. Under 30 CFR 57.5071(a), mine operators must monitor as often as necessary to effectively determine, under conditions that can be reasonably anticipated in the mine, whether the average personal full-shift airborne exposure to DPM exceeds the DPM limit specified in 30 CFR 57.5060.

9. Notify Sampling

Sampling must be conducted to ensure that miners are not exposed to dangerous levels of DPM. Prior to sampling, miners and their representatives must be notified of the date and time of DPM sampling. Following DPM sampling, results must be posted along with any necessary corrective action. Additionally, mine operators must provide any recordkeeping requirements to miners, former miners, or a miner's representative, upon request.

Under 30 CFR 57.5071(b), mine operators must provide affected miners and their representatives with an opportunity to observe exposure monitoring required by this section. Mine operators must give prior notice to affected miners and their representatives of the date and time of intended monitoring.

10. Post Sampling Result and Retain Record

Under 30 CFR 57.5071(d)(1), the results of monitoring for DPM, including any results received by a mine operator from sampling performed by MSHA, must be posted on the mine bulletin board within 15 days of receipt and must remain posted for 30 days. Mine operators must provide a copy of the results to the authorized representative of miners.

Under 30 CFR 57.5071(d)(2), mine operators must retain for five years (from the date of sampling), the results of any samples mine operators collected as a result of monitoring under this section, and information about the sampling method used for obtaining the samples.

11. Post Notice of Corrective Action

Under 30 CFR 57.5071(c), if any monitoring performed under this section indicates that a miner's exposure to diesel particulate matter exceeds the DPM limit specified in 30 CFR 57.5060, the operator must promptly post notice of the corrective action being taken on the mine bulletin board, initiate corrective action by the next work shift, and promptly complete such corrective action.

12. Respond to Request for Exposure Record by Miner

Under 30 CFR 57.5075(a), the recordkeeping requirements of the DPM standards contained in 30 CFR 57.5060 through 57.5071 are listed in a table entitled "Table 57.5075(A)—Diesel Particulate Matter Recordkeeping Requirements." The table lists the records that mine operators must maintain pursuant to 30 CFR 57.5060, 57.5065, 57.5066, 57.5070, 57.5071, and the retention period for these records.

Under 30 CFR 57.5075(b)(3) mine operators must provide access to a miner, former miner, or, with the miner's or former miner's written consent, a personal representative of a miner, to any record required to be maintained pursuant to sections 57.5071 or 57.5060(d) to the extent the information pertains to the miner or former miner. Mine operators must provide the first copy of a requested record at no cost, and any additional copies at reasonable cost.

13. Respond to Request for Health Record

Under 30 CFR 57.5075(b)(2), upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from the authorized representative of miners, mine operators must promptly provide access to any record listed in the table of DPM recordkeeping requirements in this section.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection entitled Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection

of information, including the validity of the methodology and assumptions used;

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL-MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines). MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0135.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 194.

Frequency: On occasion.

Number of Annual Responses: 49,010.

Annual Time Burden: 5,048 hours.

Annual Other Burden Costs: \$80,054.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of

public record and be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–24495 Filed 10–22–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2024–0002]

Advisory Committee on Construction Safety and Health (ACCSH): Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the ACCSH Charter.

SUMMARY: The Acting Secretary of Labor (Secretary) has renewed the charter for ACCSH.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: meilinger.francis2@dol.gov.

For general information about ACCSH: Ms. Terra Gaines, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2483; email: gaines.terra.b@dol.gov.

SUPPLEMENTARY INFORMATION: The Secretary has renewed the ACCSH charter. The new charter will expire two years from the filing date.

Congress established ACCSH in Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3704(d)(4)), to advise the Secretary in the formulation of construction safety and health standards as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. 1001, *et seq.*), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (3/25/2022). Pursuant to FACA (5 U.S.C. 1001, *et seq.*), the ACCSH charter must be renewed every two years.

The new charter was revised to change the placement of FACA in Title 5 of the U.S. Code. Previously, FACA was referenced in the Appendix of Title 5. Section 2 of the charter has been revised to reflect the new legal citation.

The new ACCSH charter is available to read or download at <http://www.regulations.gov>

(www.regulations.gov (Docket No. OSHA–2024–0002)), the federal rulemaking portal. The charter also is available on the ACCSH page on OSHA’s web page at <http://www.osha.gov/advisorycommittee/accsh/charter>, and at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions. In addition, the charter is available for viewing or download at the Federal Advisory Committee Database at <http://www.facadatabase.gov>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary of Labor’s Order No. 8–2020 (85 FR 58393), 5 U.S.C. 1001, *et seq.*, and 29 CFR part 1912.

Signed at Washington, DC, on October 16, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–24474 Filed 10–22–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–074]

NASA STEM Engagement Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the STEM Engagement Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Friday, November 15, 2024, 11:00 a.m.–3:00 p.m. All times are eastern time.

ADDRESSES: Public attendance will be virtual only. See dial-in and Webinar information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dr. Tara Strang, Designated Federal Officer, STEM Engagement Committee, NASA Headquarters, Washington, DC 20546, via email at tara.m.strang@nasa.gov or (216) 410–4335.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be open to the public via Webinar and telephonically.

Webinar connectivity information is provided below. For audio, when you join the Webinar event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed. On November 15, the event address for attendees is: <https://nasaevents.webex.com/nasaevents/j.php?MTID=m661bd71715cf9903336448f1e6f5260c>.

The webinar number is 2830 496 9893 and the webinar password is mHyZC2XMJ55. If needed, the U.S. toll conference number is +1–415–527–5035 or +1–312–500–3163 and access code is 283 049 69893 and password is 64992296.

The agenda for the meeting includes the following topics:

- Opening Remarks by Chair
- NASA STEM Engagement Update

It is imperative that this meeting be held on these days to accommodate the scheduling priorities of the key participants.

For more information, please visit NASA Advisory Council STEM Engagement Committee—NASA.

Jamie M. Krauk,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–24569 Filed 10–22–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation Research Infrastructure Guide

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1995, the National Science Foundation (NSF) is providing opportunity for public comment on revisions to the NSF Research Infrastructure Guide (RIG).

DATES: Written comments should be received by January 17, 2025, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Ave.,

Alexandria, VA 22314, or by email to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT:

Suzanne Plimpton on (703) 292-7556 or send email to splimpto@nsf.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Research Infrastructure Guide.

OMB Approval Number: 3145-0239.

Expiration Date of Approval: December 31, 2024.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The revision to the *Research Infrastructure Guide (RIG)* aims to enhance guidance for the Construction Stage and implementation, focusing on planning and execution, and improve guidance for Operations Stage planning. It introduces contextual guidance for tailoring, scaling, and progressively elaborating planning efforts across all life cycle stages of Major Facilities and Mid-scale Research Infrastructure (RI). The updates provide more comprehensive project management guidance, including risk management, contingency estimating and management, and performance measurement. Additionally, the revision offers enhanced supplemental guidance on cyberinfrastructure, information assurance, partnerships, and Agile methodology for NSF projects. The draft version of the NSF RIG is available on the NSF website at: http://www.nsf.gov/bfa/lfo/lfo_documents.jsp.

To facilitate review, a section called *List of Changes* with brief descriptions of the changes is provided in the RIG. NSF is particularly interested in public comment on the new content provided in Sections 2.9 Mid-scale Research Infrastructure Guidance, 3.5 Construction Stage and Implementation Planning, and 3.6 Operations Stage Planning.

The National Science Foundation Act of 1950 (Pub. L. 81-507) set forth NSF's mission and purpose:

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *"

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;

- Science and engineering education programs at all levels and in all the various fields of science and engineering;

- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate the next generation of scientists, engineers, and technical workers. The knowledge generated by these tools sustains U.S. leadership in science and engineering to drive the U.S. economy and secure the future. A crucial part of NSF's responsibility is to ensure that the research and education communities have access to these resources and to provide the support needed to utilize them optimally and implement timely upgrades.

The scale of advanced instrumentation spans from small research tools to large, shared resources or facilities accessible to entire scientific communities. Demand for such instrumentation is rapidly growing, driven by the accelerating pace of discovery. The need for shared Research Infrastructure (RI) is especially high, and this demand is expected to increase further as more researchers and educators depend on these expansive facilities, instruments, and databases to achieve the next significant intellectual breakthroughs.

NSF defines RI as any combination of facilities, equipment, instrumentation, computational hardware and software, and the necessary human capital in support of the same. Historically, NSF has supported diverse types of RI, including particle accelerators, detectors, radio and optical telescopes, remote research stations, research vessels and aircraft, high-performance computing, and geographically distributed observatories, as well as large-scale surveys and data sets.

NSF currently provides support for facility construction through the Major Research Equipment and Facility Construction (MREFC) account and the Research and Related Activities (R&RA) account. The MREFC account, established in FY1995, is an agency-wide capital account that provides funding for the Construction Stage of Major Facilities with a Total Project Cost (TPC) of \$100M or greater for construction, and Mid-scale RI with a TPC of \$20-\$100M.

The growth and diversification of Major Facility and Mid-scale RI require that NSF remain attentive to the ever-

changing issues and challenges inherent in their planning, construction, operation, management, and oversight. Most importantly, dedicated, competent NSF and Awardee staff are needed to manage and oversee these RI, giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is also a need for consistent, documented requirements and procedures to be understood and used by NSF program managers and awardees for all such RI.

Use of the Information: Research Infrastructure (RI) is a crucial component of the science and engineering enterprise, and supporting it is one of NSF's primary responsibilities. NSF provides awards to external entities—primarily universities, university consortia, or non-profit organizations—to construct, manage, and operate these facilities. These awards are typically made through cooperative agreements. While NSF does not directly build or operate the facilities it funds, it remains responsible for overseeing their development, management, and overall performance.

The *Research Infrastructure Guide (RIG)* is intended to:

- Articulate NSF's oversight policies, processes, and procedures at each life cycle stage for Major Facilities and Mid-scale RI.
- Provide guidance to organizations for proposal development and effective management of funded activities, following established program and project management best practices.

This version of the *RIG* provides enhanced guidance for planning across all life cycle stages, including Development, Design, Construction and implementation, Operations, and Disposition. It offers detailed instructions on tailoring, appropriately scaling, and progressively elaborating plans to align with the scale and complexity of the RI. Additionally, key project management elements are improved to ensure stronger oversight.

The *RIG* does not replace the formal procedures outlined in the *Proposal & Award Policies and Procedures Guide (PAPPG)*, which are required for all NSF awards. Instead, it supplements the *PAPPG* by providing specific guidance on NSF policies and procedures for the planning, management, and oversight of Major Facilities and Mid-scale RI. All RI require merit and technical review, as well as approval of specific deliverables. The level of review and approval for these projects differs significantly from standard grants, as does the degree of oversight necessary to ensure proper accountability for federal funds. The

RIG's requirements, recommended procedures, and best practices apply to any RI substantial enough to require ongoing, close interaction with NSF and the National Science Board.

NSF will update the *RIG* periodically to reflect requirements, policies, and/or procedures changes. Awardees are expected to monitor and adopt the requirements and best practices included in the *RIG*, which aim to improve management and oversight of Major Facility and Mid-scale RIs and enable the most efficient and cost-effective delivery of tools to the research and education communities.

Submitting proposals and subsequent documentation related to the development, design, construction or implementation, and operations of a Major Facility or Mid-scale RI to NSF is part of the information collected that NSF uses to fulfill its responsibility to support merit-based research and education projects in all the scientific and engineering disciplines. NSF is also committed to providing oversight on RI, which they must balance against monitoring its information collection to identify and address any excessive reporting burdens.

NSF has approximately 25 Major Facilities in various stages of Development, Design, Construction, Operations, and Disposition. Major Facilities undergoing a significant upgrade may be classified in both design or construction and operations at the same time. Two to four new construction awards are made approximately every five years based on science community RI needs and availability of funding. Among the 25 Major Facilities, there are approximately seven (7) facilities annually that are either in Design or Construction Stages. These stages require the highest level of reporting and management documentation per the *RIG*. Currently, there are approximately 27 Mid-scale Research Infrastructure in the Track1 Program and nine in the Track 2 Program.

Burden on the Public: NSF estimates that approximately five Full Time Equivalents (FTEs) are necessary for each Major Facility in design or construction to respond to NSF performance and financial reporting and project management documentation requirements on an annual basis; or 10,400 hours per year. NSF estimates approximately one and half (1.5) FTE for a Major Facility in operations to respond to performance and financial reporting on an annual basis; or 3,120 hours per year. For Mid-scale RI, NSF estimates approximately one (1) FTE is necessary for each Mid-Scale RI to

respond to NSF project management documentation requirements on an annual basis; or 2,080 hours per year. With seven (7) Major Facilities in design or construction and twenty-one (20) in operations and four (4) Mid-scale RI, this equates to roughly 150,000 public burden hours annually.

Comments: In addition to the previously mentioned types of comments, feedback is also invited on the following:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility;

(b) the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Dated: October 18, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024-24501 Filed 10-22-24; 8:45 am]

BILLING CODE 7555-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023-189; CP2024-103; CP2024-180; MC2025-100 and K2025-98; MC2025-101 and K2025-99; MC2025-102 and K2025-100; MC2025-103 and K2025-101; MC2025-104 and K2025-102; MC2025-105 and K2025-103; MC2025-106 and K2025-104; MC2025-107 and K2025-105; MC2025-108 and K2025-106; MC2025-109 and K2025-107; MC2025-110 and K2025-108]

New Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 25, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s)*: CP2023–189; *Filing Title*: USPS Request Concerning Amendment One to Priority Mail & USPS Ground Advantage Contract 4, with Material Filed Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 CFR 3035.105, 39 CFR 3041.310, and 39 CFR 3041.505; *Public Representative*: Almaroof Agoro; *Comments Due*: October 25, 2024.

2. *Docket No(s)*: CP2024–103; *Filing Title*: Request of United States Postal Service Concerning Modification to Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY24–1; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 CFR 3035.105, 39 CFR 3041.310, and 39 CFR 3041.505; *Public Representative*: Katalin K. Clendenin; *Comments Due*: October 25, 2024.

3. *Docket No(s)*: CP2024–180; *Filing Title*: USPS Notice of Revised Request of Amendment Four to Priority Mail Express, Priority Mail, USPS Ground Advantage & Parcel Select Contract 4, Filed Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 CFR 3035.105, 39 CFR 3041.310, and 39 CFR 3041.505; *Public Representative*: Maxine Bradley; *Comments Due*: October 25, 2024.

4. *Docket No(s)*: MC2025–100 and K2025–98; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 489 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17,

2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth R. Moeller; *Comments Due*: October 25, 2024.

5. *Docket No(s)*: MC2025–101 and K2025–99; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 490 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: October 25, 2024.

6. *Docket No(s)*: MC2025–102 and K2025–100; *Filing Title*: Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 491 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: October 25, 2024.

7. *Docket No(s)*: MC2025–103 and K2025–101; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 397 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Arif Hafiz; *Comments Due*: October 25, 2024.

8. *Docket No(s)*: MC2025–104 and K2025–102; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 398 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Arif Hafiz; *Comments Due*: October 25, 2024.

9. *Docket No(s)*: MC2025–105 and K2025–103; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 399 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Madison Lichtenstein; *Comments Due*: October 25, 2024.

10. *Docket No(s)*: MC2025–106 and K2025–104; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 400 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR

3035.105, and 39 CFR 3041.310; *Public Representative*: Madison Lichtenstein; *Comments Due*: October 25, 2024.

11. *Docket No(s)*: MC2025–107 and K2025–105; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 492 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca D. Upperman; *Comments Due*: October 25, 2024.

12. *Docket No(s)*: MC2025–108 and K2025–106; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 493 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: October 25, 2024.

13. *Docket No(s)*: MC2025–109 and K2025–107; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 494 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: October 25, 2024.

14. *Docket No(s)*: MC2025–110 and K2025–108; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 401 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: October 25, 2024.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–24552 Filed 10–22–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101370; File No. SR–MEMX–2024–40]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Regarding Options Market Data Products

October 17, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 4, 2024, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Market Data section of its fee schedule applicable to its equity options platform (“MEMX Options”) to adopt fees for certain of its market data products, which are currently offered free of charge, pursuant to MEMX Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Market Data section of the Exchange's fee schedule applicable to MEMX Options (“MEMX Options Fee Schedule”) to adopt fees for certain of its options market data products which are currently offered free of charge, namely MEMOIR Options Depth and MEMOIR Options Top (collectively, the “Options Data Feeds”). As set forth below, the Exchange believes that the proposed fees are fair and reasonable and has based its proposal on a detailed cost analysis, as well as other factors including a comparison to competitor pricing. The Exchange is proposing to implement the proposed fees immediately. The Exchange previously filed this proposal on March 28, 2024 (SR–MEMX–2024–11) (the “Initial Proposal”). On April 15, 2024, the Exchange withdrew the Initial Proposal and replaced it with SR–MEMX–2024–14 (the “Second Proposal”),³ on June 14, 2024, the Exchange withdrew the Second Proposal and replaced it with SR–MEMX–2024–25 (the “Third Proposal”),⁴ and on August 8, 2024, the Exchange withdrew the Third Proposal and replaced it with SR–MEMX–2024–31 (the “Fourth Proposal”).⁵ Now, the Exchange is withdrawing the Fourth Proposal and is replacing it with the current filing.

Before setting forth the additional details regarding the proposal as well as the cost analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

MEMX Options offers two separate data feeds to subscribers—MEMOIR Options Depth and MEMOIR Options Top. The Exchange notes that there is no requirement that any subscribing entity (“Firm”) subscribe to a particular Options Data Feed or any Options Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Options Data Feeds they deem appropriate based on their business model. The proposed fee will not apply

differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Options Data Feeds. The proposed pricing for each of the Options Data Feeds is set forth below.

MEMOIR Options Depth

The MEMOIR Options Depth feed is a MEMX-only market data feed that contains depth of book quotations and execution information based on options orders entered in the System.⁶ For the receipt of access to the MEMOIR Options Depth feed, the Exchange proposes to charge \$1,500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Options Depth feed for purposes of internal distribution (*i.e.*, an “Internal Distributor”), for external redistribution (*i.e.* an “External Distributor”), or both. The Exchange proposes to define an Internal Distributor as “a Distributor that receives an Exchange Data product and then distributes that data to one or more data recipients within the Distributor's own organization,”⁷ and an External Distributor as “a Distributor that receives an Exchange Data product and then distributes that data to a third party or one or more data recipients outside the Distributor's own organization.”⁸ The proposed access fee will be charged only once per month per Firm regardless of whether the Firm uses the MEMOIR Options Depth feed for internal distribution, external distribution, or both.⁹

MEMOIR Options Top

The MEMOIR Options Top feed is a MEMX-only market data feed that contains top of book quotations and executions based on options orders entered into the System.¹⁰ For the receipt of access to the MEMOIR Options Top feed, the Exchange proposes to charge \$750 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Options Top feed for purposes of internal distribution (*i.e.*, an Internal Distributor), external redistribution (*i.e.*

⁶ See MEMX Rule 21.15(b)(1).

⁷ See Market Data Definitions under the proposed MEMX Options Fee Schedule. The Exchange also proposes to adopt a definition for “Distributor”, which would mean any entity that receives an Exchange Data product directly from the Exchange or indirectly through another entity and then distributes internally or externally to a third party.

⁸ See Market Data Definitions under the proposed MEMX Options Fee Schedule.

⁹ The proposed definitions of Internal Distributor and External Distributor are the same definitions used in the Exchange's Equities Fee Schedule.

¹⁰ See MEMX Rule 21.15(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 99998 (April 19, 2024), 89 FR 32507 (April 26, 2024) (SR–MEMX–2024–14).

⁴ See Securities Exchange Act Release No. 100435 (June 26, 2024), 89 FR 54878 (July 2, 2024) (SR–MEMX–2024–25).

⁵ See Securities Exchange Act Release No. 100793 (August 21, 2024), 89 FR 68664 (August 27, 2024) (SR–MEMX–2024–31).

an External Distributor), or both. The proposed access fee for internal and external distribution will be charged only once per month per Firm regardless of whether the Firm uses the MEMOIR Options Top feed for internal distribution, external distribution, or both.

Billing Process

The Exchange proposes to bill for the Options Data Feeds in the same manner as it does for the market data products it provides for its equities Exchange, (the “Equities Data Feeds”), and to make this clear on the Fee Schedule. Specifically, the Fee Schedule would state that “[f]ees for Market Data products are assessed based on each active product at the close of business on the first day of each month,” and that “[i]f a product is cancelled by a subscriber’s submission of a written request or via the MEMX User Portal prior to such fee being assessed, then the subscriber will not be obligated to pay the applicable product fee. MEMX does not return pro rated fees if a product is not used for an entire month.” The Exchange believes that this billing methodology has been efficient with respect to the Equities Data Feeds and is well understood by market participants.

Additional Discussion—Background

The Exchange launched MEMX Options on September 27, 2023. As a new entrant in the equity options trading space, MEMX did not begin charging fees for options market data until April 1, 2024. The objective of this approach was to eliminate any fee-based barriers for Members to join the Exchange, which the Exchange believes was helpful in its ability to attract order flow as a new options exchange. Further, the Exchange did not initially charge for options market data because MEMX believes that any exchange should first deliver meaningful value to Members and other market participants before charging fees for its products and services.

The Exchange also did not begin charging for the Equities Data Feeds until 2022, nearly two years after it launched as a national securities exchange in 2020. In connection with the adoption of fees for the Equities Data Feeds, the Exchange conducted an extensive cost analysis (the “2022 Cost Analysis”),¹¹ and the Exchange’s Initial and Second Proposal to adopt fees for Options Data Feeds stemmed from the

same cost analysis, which it reviewed and updated for 2024 (the “2024 Cost Analysis”). The 2024 Cost Analysis combined costs for providing market data for both its equities and options trading platforms (the “Exchange Data Feeds”) due to the fact that in general, the Exchange did not add a significant amount of marginal costs for the provision of options market data, and as such, costs associated with the provision of Equities Data Feeds became shared costs for the provision of Options Data Feeds. For example, the Exchange did not hire additional staff specifically to sell or otherwise manage options market data, rather, the existing team absorbed the additional workload. Nevertheless, as discussed more fully below, the Exchange has revised its cost analysis in this proposal by focusing solely on the marginal costs associated with the addition of providing the Options Data Feeds, and allocating those costs according to the same principles utilized in the 2024 Cost Analysis (the “Options Market Data Cost Analysis”). Pursuant to the Options Market Data Analysis, the Exchange calculated the total marginal costs for providing the Options Data Feeds in 2024 at approximately \$307,001. In order to establish fees that are designed to recover the marginal costs of providing the Options Data Feeds with a reasonable profit margin, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Options Market Data Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is in line with that of its competitors.

Additional Discussion—Comparison With Other Exchanges

The proposed fee structure for the Options Data Feeds is not novel but is instead comparable to the fee structure currently in place for the options exchanges operated by MIAX, in particular, MIAX Pearl Options (“MIAX Pearl”),¹² and the options exchanges operated by Nasdaq, in particular, Nasdaq BX Options (“BX Options”).¹³ The Exchange is proposing fees for its Options Data Feeds that are similar in structure to MIAX Pearl and BX Options and rates that are equal to, or lower than, than the rates data recipients pay for comparable data feeds from those exchanges, in a more simplified

fashion.¹⁴ The Exchange notes that other competitors maintain fees applicable to options market data that are considerably higher than those proposed by the Exchange, including Cboe BZX Options (“BZX Options”), NYSE Arca Options and NYSE American Options.¹⁵ However, the Exchange has focused its comparison on MIAX Pearl and BX Options because their similar market data products are offered at prices lower than several other incumbent exchanges, which is a similar approach to that proposed by the Exchange.¹⁶

The fees for the MIAX Pearl Liquidity Feed—which like the MEMOIR Options

¹⁴ As noted below, based on its review of MIAX Pearl’s Fee Schedule, the Exchange believes that MIAX Pearl charges separate fees for Internal and External Distribution of its options data feeds, and while its External Distribution fees are identical to the Exchange’s proposed flat fee for all uses for both comparable products, its Internal Distribution Fees are slightly lower than what the Exchange is proposing for access to the Exchange’s Options Data Feeds. Nevertheless, given that the Exchange allows both Internal and External Distribution for a single fee for a single data feed, the Exchange believes its proposed fees remain comparable and competitive with MIAX Pearl.

¹⁵ Fees for BZX Options Depth, which is the comparable product to MEMOIR Options Depth, are \$3,000 for internal distribution and \$2,000 for external distribution compared to the Exchange’s proposed fee of \$1,500 for all uses. In addition, BZX Options charges professional user fees of \$30 per month and non-professional user fees of \$1.00 per month for each entity to which it distributes the feed (alternatively, it offers distributors an option to purchase a monthly Enterprise Fee of \$3,500 to distribute to an unlimited number of users), which the Exchange is not proposing to charge. Fees for BZX Options Top, which is the comparable product to MEMOIR Options Top, are \$3,000 for internal distribution, \$2,000 for external distribution, with Professional User Fees of \$5 per month, Non-Professional Fees of \$0.10 per month per user, or an Enterprise Fee ranging anywhere from \$20,000 to \$60,000 per month depending on the number of users to which the distributor plans to distribute the feed. Again, the Exchange is not proposing any additional User Fees for MEMOIR Options Top, but rather, a flat fee of \$750 for all uses. See the BZX Options Fee Schedule, available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Fees for NYSE Arca Options Deep and NYSE American Options Deep, which are the comparable products to MEMOIR Options Depth, are \$3,000 for access (internal use) and \$2,000 for redistribution (external distribution), and \$5,000 for non-display use, compared to the Exchange’s proposed fee of \$1,500 for all uses. NYSE Arca Options and NYSE American Options also charge professional user fees of \$50 per User, and Non-Professional User Fees of \$1.00 per user, capped at \$5,000 per month. Again, the Exchange does not require any counting of users and has instead proposed a flat fee of \$1,500 for all uses. Fees for the NYSE Arca Options Top and NYSE American Options Top, which are the comparable products to MEMOIR Options Top are the same as above (\$3,000 for internal, \$2,000 for external and \$5,000 for non-display, with the additional Professional and Non-Professional User Fees), compared to the Exchange’s proposed fee of \$750 for all uses. See NYSE Proprietary Market Data Pricing Guide, available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.

¹⁶ See *supra* notes 12–13.

¹¹ See Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04).

¹² See MIAX Pearl Options Fee Schedule, available at: <https://www.miaxglobal.com/markets/us-options/pearl-options/fees> (the “MIAX Pearl Fee Schedule”).

¹³ See the Nasdaq BX Options Fee Schedule, available at: <https://listingcenter.nasdaq.com/rulebook/bx/rules/bx-options-7>.

Depth feed, includes top of book, depth of book, trades, and administrative messages—consist of an internal distributor access fee of \$1,250 per month and an external distributor access fee of \$1,500 per month. As such, the Exchange's proposed rate for all uses of \$1,500 per month is equal to what MIAx Pearl charges for external distribution, and \$250 higher than what it charges for internal distribution only.¹⁷

The fees for the MIAx Pearl Top of Market Feed—which is the comparable product to MEMOIR Options Top, consist of an internal distributor access fee of \$500 per month and an external distributor access fee of \$750. Again, the Exchange's proposed rate for all uses of \$750 per month is identical to what MIAx Pearl charges for external distribution, and \$250 higher than what it charges for internal distribution.

While the Exchange's proposed fee is slightly higher than what MIAx Pearl charges for internal distribution of its similar products, the Exchange believes that the simplicity of a single fee is preferable, specifically by reducing audit risk and simplifying reporting, both for the Exchange and its customers. Further, to the extent MIAx Pearl assesses both fees for both uses, it would cost more overall to receive and provide both internal and external distribution of MIAx Pearl's comparable options data feeds than it does to receive and provide both internal and external distribution of the Exchange's Options Data Feeds.

As an additional cost comparison, the fees for both Nasdaq BX Options Depth of Market Feed ("BX Depth") and Top of Market Feed ("BX Top") are \$1,500 per month for internal distribution and \$2,000 for external distribution, with an added \$2,500 fee for a non-Display Enterprise License.¹⁸ While one distributor fee allows access to both BX Top and BX Depth, (for example, \$1,500 per month would allow a BX Options customer internal distribution of both BX Top and BX Depth) if a BX Options Customer wanted the same access provided under the Exchange's proposed fees, (*i.e.* for all uses) it would need to pay an additional \$2,000 for external distribution and \$2,500 per month for a non-display enterprise license fee. In addition, BX Options charges monthly per subscriber fees for professional or non-professional use¹⁹

which the Exchange will not charge for its similar market data products.

Additional Discussion—Options Market Data Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, in proposing to charge fees for Options Data Feeds, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.*, to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on its Options Market Data Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,²⁰ and Rule 19b-4 thereunder,²¹ with respect to the types of information self-regulatory organizations ("SROs") should provide when filing fee changes, and Section 6(b) of the Act,²² which requires, among other things, that exchange fees be reasonable and equitably allocated,²³ not designed to permit unfair discrimination,²⁴ and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁵ This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.²⁶

As noted above, MEMX recently conducted a study of its aggregate costs to produce the Exchange Data Feeds—the 2024 Cost Analysis, and it used the 2024 Cost Analysis as the foundation of the Options Market Data Cost Analysis, which ultimately went a step further in separately assessing the marginal costs associated with the provision of the Options Data Feeds as a subset of the total aggregate costs originally allocated towards the provision of the Exchange Data Feeds (*i.e.* both the Equities and Options Data Feeds) and allocating those marginal costs towards the provision of the Options Data Feeds.

Prior to discussing how the Exchange allocated applicable costs under the Options Market Data Cost Analysis, the Exchange believes it is first necessary to set forth its process in conducting the 2024 Cost Analysis. The 2024 Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services and trading permits, regulatory services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.*, personnel), and certain general and administrative expenses ("cost drivers"). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.*, message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (80%), with smaller allocations to logical ports (11%), and the remainder to the provision of transaction execution, regulatory services, and market data services (9%). The allocation methodology was decided through conversations with senior management familiar with each

use to demonstrate that their fee filings comply with the standards of the Exchange Act ("Fee Guidance"). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

¹⁷ See MIAx Pearl Options Fee Schedule, *supra* note 12.

¹⁸ See Nasdaq BX Options Fee Schedule, *supra* note 13.

¹⁹ *Id.*

²⁰ 15 U.S.C. 78s(b)(1).

²¹ 17 CFR 240.19b-4.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(4).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(8).

²⁶ In 2019, Commission staff published guidance suggesting the types of information that SROs may

area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory

fees, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue.

Through the Exchange's extensive 2024 Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of the Exchange Data Feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the Exchange Data Feeds, and thus bears a relationship that is, "in nature and closeness," directly related

to the Exchange Data Feeds. Based on its analysis, MEMX calculated its aggregate annual costs for providing the Exchange Data Feeds at \$3,683,375.

The following chart details the individual line-item (annual) costs considered by MEMX to be related to offering the Exchange Data Feeds to its Members and other customers as well as a percentage of the Exchange's overall costs that such costs represent for such area (e.g., as set forth below, the Exchange allocated approximately 8% of its overall Human Resources cost to offering Exchange Data Feeds).

Costs Driver	Costs	% of All
Human Resources	\$2,606,282	8
Data Center	69,340	2
Technology (Hardware, Software Licenses, etc.)	287,141	7
Depreciation	397,471	5
Allocated Shared Expenses	323,141	4
Total	3,683,375	5.8

Options Market Data Cost Analysis

As noted above, the 2024 Cost Analysis estimated aggregate annual costs for providing the Exchange Data Feeds at \$3,683,375. Based on the limited number of additional resources specifically devoted to providing and administering the Options Data Feeds, the Exchange determined it was appropriate to conduct an allocation of only marginal costs related to the provision of the Options Data Feeds. In conducting this analysis, the Exchange adopted an allocation model for four of the five categories (all but Human Resources, as described below) that was proportionally based upon the number of products sold in equities and options, and given the fact that the Exchange offers more data feeds and charges for Professional and Non-Professional User Fees in equities, the resulting allocation was 95.1% towards equities, and 4.9% towards options.

For Human Resources, however, the Exchange determined it appropriate to employ a slightly different allocation model in order to accurately identify the Exchange's marginal costs attributed to the provision of the Options Data Feeds.

As described more fully below, the Exchange consulted with senior managers and department leaders in order to identify and distinguish Human Resources costs which directly support the Options Data Feeds (these Human Resources costs, hereinafter "direct" costs). The Exchange then added such direct cost allocation to 4.9% of the remaining "indirect" Human Resources costs (the calculation of which was based on the same proportional model for the remaining four categories) to find a total Human Resources Options Data Feeds cost allocation of approximately 9.8% of the total Human Resources allocated toward the provision of the Exchange Data Feeds.

The Exchange determined that this combined approach was appropriate for Human Resources given the fact that department leaders have direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange, and thus, it is possible to be more precise when it comes to Human Resources costs, enabling managers to separate out time "directly" spent on the Options and Equities Data Feeds,

respectively, in order to arrive at the direct costs noted above. This same approach would not be as effective with respect to the remaining categories, as managers do not have the same quantifiable knowledge and costs for the remaining categories are determined with precision by using an allocated costs model. For example, surveying managers about the specific percentage of Depreciation or Data Center costs that are attributed to the provision of the Options Data Feeds would not yield an accurate result, whereas the allocated costs model provides an accurate measure of such costs.

The following chart details the individual line-item costs considered by MEMX to be related to offering the Options Data Feeds to its Members and other customers as a well as the percentage of the Exchange's overall Exchange Data Feed costs that such costs represent for such area (e.g., as set forth below, the Exchange allocated approximately 9.8% of the Human Resources costs allocated to the provision of the Exchange Data Feeds to the Options Data Feeds, or \$254,331 annually).²⁷

Costs driver	Costs	% of market data total
Human Resources	\$254,331	9.8
Data Center	3,391	4.9
Technology (Hardware, Software Licenses, etc.)	14,041	4.9

²⁷ It follows that the remaining percentage of costs allocated to the Exchange Data Feeds in the 2024 Cost Analysis were allocated to the provision of the Equities Data feeds in the Options Market Data Cost

Analysis. For example, the 2024 Cost Analysis allocated \$2,606,282 of Human Resources costs to the provision of the Exchange Data feeds. In the Options Market Data Cost Analysis, the Exchange

then allocated \$254,331, or 9.8% of that total to the provision of Options Data Feeds, and thus the remaining \$2,351,951 (or 90.2%) to the provision of the Equities Data Feeds.

Costs driver	Costs	% of market data total
Depreciation	19,436	4.9
Allocated Shared Expenses	15,802	4.9
Total	307,001	

Human Resources

In allocating personnel (Human Resources) costs, in order to not double count any allocations and to ensure that each employee's time is 100% allocated, the Exchange first excluded any employee time allocated towards options regulation in order to recoup costs via the Options Regulatory Fee ("ORF"), as well as all other revenue streams, including transaction execution, membership services, physical connectivity, and application sessions.²⁸ Of the remaining time left over, the Exchange considered the amount of employee time for employees whose functions include directly providing services necessary to offer the Exchange Data Feeds (primarily the Exchange's systems engineering, member experience, and market operations teams), including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security, compliance and finance personnel). The Exchange notes that it has fewer than 100 employees and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the Exchange Data Feeds, and confirming that the proposed allocation was reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the Options Data Feeds and Equities Data Feeds, respectively. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Next, of the *direct* time allocated to the Exchange Data Feeds (which amounted to approximately 61.3% of the total Human Resources allocated to

the Exchange Data Feeds, or approximately \$1,597,398), the Exchange determined that approximately 87% of the direct time spent on the Exchange Data Feeds was focused on the Equities Data Feeds, and approximately 13% of that time was focused on the Options Data Feeds.²⁹ Again, these estimates were determined by consulting with department leaders, determining which employees are involved in tasks related to providing the Equities and Options Data Feeds, respectively, and confirming those proposed allocations were reasonable based on an understanding of the percentage of time employees devote to those tasks. Notably, the Exchange did not hire additional personnel to focus solely on the Options Data Feeds, however, additional hiring occurred to support the launch of MEMX Options and certain of those personnel have significant responsibilities with respect to the provision of the Exchange Data Feeds, which supports the slightly higher Human Resources cost allocated towards the provision of the Options Data Feeds. The Exchange believes that a higher allocation is also reasonable because the Human Resources component of providing the Options Data Feeds does require additional resources as compared to other components necessary to provide such data feeds, particularly with respect to the sales function, ongoing support, and application of the Exchange's policies with respect to the provision of market data. Further, as MEMX Options grows, it is likely that additional personnel will be necessary to support such growth in order to provide customer support, including with respect to the Options Data Feeds.

Finally, for the remaining Human Resources costs allocated toward the provision of the Exchange Data Feeds that were not already allocated as "direct" costs (*i.e.* the remaining 38.7% of the total Human Resources costs allocated towards the provision of the Exchange Data Feeds, or \$1,008,883), the Exchange applied the same allocation model as it did for the

remaining categories that was proportionally based on the number of products sold in Equities and Options, or 95.1% towards Equities and 4.9% towards Options, in order to determine the remaining costs that should be allocated toward the provision of Options Data Feeds.³⁰ Accordingly, a total of approximately \$254,331 of the Exchange's Human Resources costs, comprised of both direct and indirect costs, were allocated towards the provision of the Options Data feeds, or approximately 9.8%. Again, the Exchange believes that a higher allocation of Human Resources costs is appropriate, given the Exchange's consideration of both the direct time attributed towards the provision of the Options Data Feeds coupled with a proportional allocation of Human Resources time that indirectly supports the provision of the Options Data Feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the Exchange Data Feeds in the third-party data centers where the Exchange maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties). Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated \$3,391 of its Data Center costs (*i.e.* 4.9% of the costs allocated towards the Exchange Data Feeds in the 2024 Cost Analysis) towards the provision of the Options Data Feeds.

Technology

The Technology category includes the Exchange's network infrastructure, other hardware, software, and software licenses used to operate and monitor physical assets necessary to provide the Exchange Data Feeds. Of note, certain of these costs were included in separate Network Infrastructure and Hardware and Software Licenses categories in the 2022 Cost Analysis; however, in order to align more closely with the Exchange's

²⁸ See Securities Exchange Act Release No. 99259 (January 2, 2024), 89 FR 965 (January 8, 2024) (SR-MEMX-2023-38). See also Securities Exchange Act Release No. 100021 (April 24, 2024), 89 FR 34298 (April 30, 2024) (SR-MEMX-2024-13).

²⁹ Specifically, 13% of the direct Human Resources cost allocated towards the provision of the Options Data Feeds totaled approximately \$204,996.

³⁰ Specifically, 4.9% of the indirect Human Resources costs allocated towards the provision of the Options Data Feeds totaled approximately \$49,334.

audited financial statements, these costs were combined into the broader Technology category. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated approximately \$14,041 of its Technology costs to the Options Data Feeds in 2024.

Depreciation

The vast majority of the software the Exchange uses with respect to its operations, including the software used to generate and disseminate the Options Data Feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation costs related to depreciated software used to generate and disseminate the Options Data Feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the Options Data Feeds in the near-term, as well as the servers used at the Exchange's primary and back-up data centers specifically used for the Options Data Feeds. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated approximately \$19,346 of its Depreciation costs towards the provision of the Options Data Feeds.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses were allocated to the Options Data Feeds. The costs included in general shared expenses allocated to the Options Data Feeds include office space and office expenses (*e.g.*, occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of paying individuals to serve on the Exchange's Board of Directors or any committee was not allocated to providing Options Data Feeds. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated \$15,802 of its Allocated Shared Expenses to the Options Data Feeds in 2024.

Cost Analysis—Additional Discussion

Based on the current number of subscribers to the Options Data Feeds,³¹

the Exchange anticipates annual 2024 revenue for Options Data Feeds of \$342,000.³² The proposed fees for the Options Data Feeds are designed to permit the Exchange to cover the marginal costs allocated to providing the Options Data Feeds with a profit margin that the Exchange believes is modest (approximately 10%),³³ which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the Options Data Feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.).

The Exchange like other exchanges is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Options Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Options Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs with a reasonable profit margin.³⁴ Similarly,

for the Options Data Feeds, which did indeed occur. Specifically, of the nineteen (19) customers receiving the Options Data Feeds free of charge, four (4) requested removal once the Exchange began charging in April 2024.

³² This revenue projection is based on 14 MEMX Options Depth and 10 MEMX Options Top subscriptions per month in 2024.

³³ The Exchange calculated this profit margin by dividing the annual projected profit of \$34,999 by the annual projected revenue of \$342,000 and multiplying by 100.

³⁴ The Exchange notes that it does not believe that a 10% profit margin is necessarily competitive, and instead that this is likely significantly below the mark-up many businesses place on their products and services.

the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.*, to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable margin, or decrease fees in the event that revenue or the profit margin materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)³⁵ of the Act in general, and furthers the objectives of Section 6(b)(4)³⁶ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)³⁷ of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed definitions and fee structure

³¹ In the Initial and Second Filings, the Exchange's revenue projections anticipated a drop in subscriptions once the Exchange began charging

³⁵ 15 U.S.C. 78f.

³⁶ 15 U.S.C. 78f(b)(4).

³⁷ 15 U.S.C. 78f(b)(5).

described above are consistent with the definitions and fee structure used by most U.S. options exchanges, MIAIX Pearl and BX Options in particular. As such, the Exchange believes it is adopting a model that is easily understood by Members and non-Members, most of which also subscribe to market data products from other exchanges. For this reason, the Exchange believes that the proposed definitions and fee structure described above are consistent with the Act generally, and Section 6(b)(5)³⁸ of the Act in particular.

One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure, with fees that are discounted when compared to comparable data products and services offered by competitors.³⁹

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) “platform” competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee’s terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a

cost-plus model to determine a reasonable fee structure that is informed by the Exchange’s understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange’s marginal costs of offering the Options Data Feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange’s annual marginal costs of providing market data in options with a reasonable profit margin. The Exchange also believes that performing the Options Market Data Cost Analysis utilizing the marginal costs related to the Options Data Feeds is reasonable because as a new entrant in the equity options space, the Exchange simply cannot charge more at this time based on what its competitors charge and what other options are available to market participants for the receipt of options market data. If the Exchange chose to allocate the average cost of providing market data to options and equities via a 50/50 split, then based on its proposed pricing and the revenues projected, the analysis would result in a profit margin for the Options Data Feeds of –265%.⁴⁰ Alternatively, the Exchange would need to significantly increase the fees charged for the Options Data Feeds, which in turn, the Exchange believes would result in customers canceling their access to such Options Data Feeds and potentially participating less on the Exchange. Accordingly, the Exchange believes it is reasonable to seek to recover only the marginal costs associated with the Options Data Feeds in this proposal. As discussed in the Purpose section, the Exchange estimates that the Options Data Feed fees proposed herein will result in annual revenue of approximately \$342,000, representing a profit margin of approximately 10% for the provision of Options Market Data. As such, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its marginal expenses for

⁴⁰In calculating this margin, for all categories other than Human Resources, the Exchange split the applicable expenses 50/50 between the Equities Data Feeds and the Options Data Feeds. For Human Resources, the Exchange first allocated the 8% of the total Exchange Data Feeds Human Resources costs which were determined to be directly related to the provision of the Options Data Feeds (i.e. 8%, as noted above), plus 50% of the remaining Human Resources costs not otherwise directly related to the provision of the Equities Data Feeds and thus allocated thereto.

providing options market data (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the Options Data Feeds are reasonable when compared to fees for comparable products, such as the MIAIX Pearl Top of Market Feed, the MIAIX Pearl Liquidity Feed, and the BX Options Top and Depth Feeds, compared to which the Exchange’s proposed fees are equivalent or lower, as well as other comparable data feeds priced significantly higher than the Exchange’s proposed fees for the Options Data Feeds.⁴¹ Additionally, the Exchange’s single flat fee for each of its Options Data Feeds, regardless of use type, offers a more simplistic approach to market data pricing. Specifically with respect to the MEMOIR Options Depth feed, the Exchange believes that the proposed fee for such feed is reasonable because it represents not only the value of the data available from the MEMOIR Options Top feed, which has a lower proposed fee, but also the value of receiving the depth-of-book data on an order-by-order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants. The MEMOIR Options Top feed, as described above, can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it reasonable for the products to be priced as proposed, with MEMOIR Options Depth having a higher price than MEMOIR Options Top.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Options Data Feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes that the proposed fees are equitably

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ See *supra* note 15.

⁴¹ *Id.* [sic]

allocated because they will apply uniformly to all data recipients that choose to subscribe to the Options Data Feeds. Any Firm that chooses to subscribe to one or both of the Options Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or both of the Options Data Feeds is based on objective differences in usage of Options Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Options Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants. The MEMOIR Options Top feed, as described above, can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with MEMOIR Options Top having the lower price of the two Options Data Feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the Options Data Feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between the feeds themselves.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Options Data Feed(s). Any Firm that chooses to subscribe to the Options Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fee for MEMOIR Options Depth is higher, Firms seeking lower cost options may instead choose to receive data through the MEMOIR Options Top feed for a lower cost. Alternatively, Firms can choose to receive data solely from the Options Price Reporting Authority ("OPRA") for a lower cost. The Exchange notes that Firms can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each Firm has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory

to base pricing upon the amount of information contained in each data feed, which may have additional value to a market participant. As described above, the MEMOIR Options Top feed can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with MEMOIR Options Top having a lower price than MEMOIR Options Depth.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁴² the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees for Options Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Options Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or both Options Data Feeds is based on objective differences in usage of Options Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Options Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Options Data Feeds consumed by various market participants.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not regulatorily required to subscribe to any of the Options Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants, but with comparable and in many cases higher rates for

options market data feeds.⁴³ The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing options exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

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)(ii) of the Act⁴⁴ and Rule 19b-4(f)(2)⁴⁵ 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 shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-40 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-MEMX-2024-40. This file

⁴³ See *supra* note 15.

⁴⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁵ 17 CFR 240.19b-4(f)(2).

⁴² 15 U.S.C. 78f(b)(8).

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-MEMX-2024-40 and should be submitted on or before November 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-24469 Filed 10-22-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101368; File No. SR-SAPPHIRE-2024-31]

Self-Regulatory Organizations; MIAx Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the Exchange's Proprietary Market Data Feeds: (i) MIAx Sapphire Top of Market Data Feed; (ii) MIAx Sapphire Complex Top of Market Data Feed; and (iii) MIAx Sapphire Liquidity Feed

October 17, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2024, MIAx Sapphire, LLC ("MIAx Sapphire" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAx Sapphire Options Exchange Fee Schedule (the "Fee Schedule") to establish fees for the Exchange's proprietary market data feeds: (i) MIAx Sapphire Top of Market ("ToM") data feed; (ii) MIAx Sapphire Complex Top of Market ("cToM") data feed; and (iii) MIAx Sapphire Liquidity Feed ("SLF").

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, at MIAx Sapphire's principal office, 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

On July 19, 2024, the Exchange filed a proposal to establish the ToM, cToM and SLF data feeds (collectively, the "market data feeds")³ for MIAx Sapphire. The Exchange now proposes to amend the Fee Schedule to establish

fees for each of these market data feeds.⁴ The Exchange also proposes to waive such fees during an Initial Waiver Period,⁵ which would run for six full calendar months from the initial effective date (August 12, 2024) of the proposed fees to incentivize market participants to subscribe and make the Exchange's proprietary market data more widely available. The Exchange initially filed this proposal on August 8, 2024 (SR-SAPPHIRE-2024-18). The Exchange withdrew SR-SAPPHIRE-2024-18 on October 3, 2024 and submitted this proposal.

The ToM data feed contains top of book quotations based on options orders⁶ and quotes⁷ resting on the Exchange's Simple Order Book⁸ as well as administrative messages, such as other real-time Exchange System⁹ functions.¹⁰ The cToM data feed includes the same types of information as ToM, but for Complex Orders¹¹ on the Exchange's Strategy Book.¹² This information includes the Exchange's best bid and offer for a complex strategy,¹³ with aggregate size, based on

⁴ The Exchange established the Definitions section of the Fee Schedule in a separate rule filing. See Securities Exchange Act Release No. 100683 (August 9, 2024), 89 FR 66467 (August 15, 2024) (SR-SAPPHIRE-2024-13).

⁵ The term "Initial Waiver Period" means, for each applicable fee, the period of time from the initial effective date of the MIAx Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions section of the Fee Schedule.

⁶ The term "order" means a firm commitment to buy or sell option contracts. See Exchange Rule 100.

⁷ The term "quote" or "quotation" means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any. When the term order is used in the Exchange's Rules and a bid or offer is entered by the Market Maker in the option series to which such Market Maker is registered, such order shall, as applicable, constitute a quote or quotation for purposes of the Exchange's Rules. See Exchange Rule 100.

⁸ The "Simple Order Book" is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 100.

⁹ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹⁰ See MIAx Sapphire Options Exchange User Manual, Version 1.0.0, Section 5.06, dated December 11, 2023, available at https://www.miaxglobal.com/miax_sapphire_user_manual.pdf (last visited July 24, 2024).

¹¹ In sum, a "Complex Order" is "any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the 'legs' or 'components' of the complex order), for the same account. . . ." See Exchange Rule 518(a).

¹² The "Strategy Book" is the Exchange's electronic book of complex orders. See Exchange Rule 100.

¹³ The term "complex strategy" means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100588 (July 25, 2024), 89 FR 61554 (July 31, 2024) (SR-SAPPHIRE-2024-01).

⁴⁶ 17 CFR 200.30-3(a)(12).

displayable orders in the complex strategy. The cToM data feed also provides subscribers with the following information: (i) the identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (e.g., halted, open, or resumed). ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

The Exchange notes that there is no requirement that any Member¹⁴ or market participant subscribe to either the ToM or cToM data feeds. Instead, a Member may choose to maintain subscriptions to ToM or cToM based on their trading strategies and individual business decisions. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information¹⁵ from the Options Price Reporting Authority ("OPRA") for the same classes or series of options that are included in the proprietary data feed (including for exclusively listed products), and proprietary data feeds cannot be used to meet that particular requirement. The proposed fees described below would not apply differently based upon the size or type of firm, but rather based upon the type of subscription a firm has to ToM or cToM and their use thereof, which are based upon factors deemed relevant by each firm.

order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. See Exchange Rule 518(a).

¹⁴ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

¹⁵ The term "consolidated Options Information" means "consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA . . ." Access to consolidated Options Information is deemed "equivalent" if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC ("OPRA Plan"), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

The SLF data feed provides market participants with a direct data feed that allows subscribers to receive real-time updates of options orders, products traded on MIAX Sapphire, MIAX Sapphire System status, and MIAX Sapphire underlying trading status. When an order is received or an order state changes, published order information will be transmitted over SLF, including time stamp, action, product ID, order ID, order side, order type, order price, original order size, open order size, time in force, origin, open or close, and route instruction. For complex orders, complex strategy definition notification and complex order notice are also included. Subscribers to the SLF will get a list of all options symbols and strategies that will be traded and sourced on that feed at the start of every session.

Each of the proposed fees are described below. Again, the Exchange proposes to not charge the proposed fees during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

ToM

The Exchange proposes to charge a monthly fee of \$1,200 to Internal Distributors¹⁶ and \$2,000 to External Distributors for the ToM data feed after the expiration of the Initial Waiver Period. The proposed fees are intended to cover the Exchange's costs with compiling and producing the ToM data feed described in the Exchange's cost analysis detailed below. The Exchange proposes to assess Internal Distributors fees that are less than the fees assessed for External Distributors because External Distributors may monetize their receipt of the ToM data feed by charging their customers fees for receipt of the Exchange's data. Internal Distributors do not have the same ability. The Exchange does not propose to charge any additional fees based on a Distributor's use of the ToM data feed (e.g., displayed versus non-displayed

use), redistribution fees, or individual per user fees.

cToM

The Exchange proposes to charge a monthly fee of \$1,200 to Internal Distributors and \$2,000 to External Distributors for the cToM data feed after the expiration of the Initial Waiver Period. The proposed fees are intended to cover the Exchange's costs with compiling and producing the cToM data feed described in the Exchange's cost analysis detailed below. The Exchange proposes to assess Internal Distributors fees that are less than the fees assessed for External Distributors because External Distributors may monetize their receipt of the cToM data feed by charging their customers fees for receipt of the Exchange's data. Internal Distributors do not have the same ability. The Exchange does not propose to charge any additional fees based on a Distributor's use of the cToM data feed (e.g., displayed versus non-displayed use), redistribution fees, or individual per user fees.

SLF

The Exchange proposes to charge a monthly fee of \$3,000 to Internal Distributors and \$3,500 to External Distributors for the SLF data feed after the expiration of the Initial Waiver Period. The proposed fees are intended to cover the Exchange's costs with compiling and producing the SLF data feed described in the Exchange's Cost Analysis detailed below. The Exchange proposes to assess Internal Distributors fees that are less than the fees assessed for External Distributors because External Distributors may monetize their receipt of the SLF data feed by charging their customers fees for receipt of the Exchange's data. Internal Distributors do not have the same ability. The Exchange does not propose to charge any additional fees based on a Distributor's use of the SLF data feed (e.g., displayed versus non-displayed use), redistribution fees, or individual per user fees.

* * * * *

The Exchange proposes that each Distributor would be charged for each month it is credentialed to receive ToM, cToM, and/or SLF in the Exchange's production environment. Fees for each of the market data feeds will be reduced for new Distributors who subscribe to a market data feed mid-month for the first month they subscribe following the expiration of the Initial Waiver Period, as described above. New Distributors who subscribe mid-month for each market data feed would be assessed a pro-rata percentage of the applicable

¹⁶ A "Distributor" of MIAX Sapphire data is any entity that receives a feed or file of data either directly from MIAX Sapphire or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute an Exchange Data Agreement. See Fee Schedule, proposed Section 6(a).

Distribution fee based on the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been first credentialed to receive each of the market data feeds in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes the proposed fees will allow the Exchange to offset the expenses the Exchange has and will continue to incur associated with compiling and disseminating the market data feeds. Further, the Exchange believes it provided sufficient transparency in the Cost Analysis provided below, which provides a basis for how the Exchange determined to charge such fees.

The Exchange issued an alert publicly announcing the proposed fees on July 23, 2024.¹⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁸ of the Act in general, and furthers the objectives of Section 6(b)(4)¹⁹ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)²⁰ of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2019, Commission staff published guidance suggesting the types of information that self-regulatory organizations (“SROs”) may use to demonstrate that their fee filings comply with the standards of the Exchange Act (the “Staff Guidance”).²¹ While the

Exchange understands that the Staff Guidance does not create new legal obligations on SROs, the Staff Guidance is consistent with the Exchange’s view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. The Staff Guidance provides that in assessing the reasonableness of a fee, the Staff would consider whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, the Staff Guidance further provides that the Staff would consider whether the evidence provided by an SRO in a fee filing proposal demonstrates (i) that there are reasonable substitutes for the product or service that is the subject of a proposed fee; (ii) that “platform” competition constrains the fee; and/or (iii) that the revenue and cost analysis provided by the SRO otherwise demonstrates that the proposed fee would not result in the SRO taking supra-competitive profits.²² The Exchange provides sufficient evidence below to support the findings that the proposed fees are reasonable because the projected revenue and cost analysis contained herein demonstrates that the proposed fees would not result in the Exchange taking supra-competitive profits.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among Members and markets. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange’s market data. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange included a cost analysis below in connection with the proposed market data fees and the costs associated with compiling and providing the ToM, cToM, and SLF feeds (the “Cost Analysis”).

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and

transparently assessing the impact on Members—both generally and in relation to other Members—to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are consistent with the Act based on the Exchange’s Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,²³ and Rule 19b–4 thereunder,²⁴ with respect to the types of information SROs should provide when filing fee changes, and Section 6(b) of the Act,²⁵ which requires, among other things, that exchange fees be reasonable and equitably allocated,²⁶ not designed to permit unfair discrimination,²⁷ and that they do not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.²⁸ This proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.

The Exchange’s affiliates²⁹ previously completed a study of their aggregate costs to produce market data and provide connectivity and port services, defined above as its Cost Analysis.³⁰ Personnel began to plan for and develop the Exchange beginning in early 2023, and costs included in this Cost Analysis are related to the development and buildout of the Exchange since that time. During the Exchange’s development and buildout that occurred throughout 2023 and continues to today, the Exchange routinely studied its

²³ 15 U.S.C. 78s(b)(1).

²⁴ 17 CFR 240.19b–4.

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b)(8).

²⁹ The affiliated markets include Miami International Securities Exchange, LLC (“MIAX”); separately, the options and equities markets of MIAX PEARL, LLC (“MIAX Pearl”); and MIAX Emerald, LLC (“MIAX Emerald”).

³⁰ See Securities Exchange Act Release Nos. 100041 (April 26, 2024), 89 FR 35868 (May 2, 2024) (SR–MIAX–2024–25); 100319 (June 12, 2024), 89 FR 51562 (June 18, 2024) (SR–PEARL–2024–25); 100042 (April 26, 2024), 89 FR 35879 (May 2, 2024) (SR–EMERALD–2024–15). The Exchange frequently updates its Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity (once live trading begins) changes. The Exchange’s most recent Cost Analysis was conducted ahead of this filing.

¹⁷ See Fee Change Alert, MIAX Sapphire Options Exchange—Summary of Proposed Non-Transaction Fees (July 23, 2024), available at <https://www.miaxglobal.com/alert/2024/07/23/miax-sapphire-options-exchange-summary-proposed-non-transaction-fees?nav=all>.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

²² Id.

aggregate costs to produce and disseminate Exchange market data, which were used to determine the proposed pricing for the market data feeds as part of the Exchange's Cost Analysis. The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.*, personnel), and certain general and administrative expenses ("cost drivers").

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets for each cost driver as part of the Exchange's 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a "bottom up" budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.*, price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,³¹ storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.*, the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will

cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates five separate and distinct marketplaces,³² the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all cost drivers are the same at each individual marketplace and dividing total cost by five (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across each exchange for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process. For the 2024 budget process for MIAx Sapphire, only costs and anticipated revenues associated with the electronic exchange were considered. While MIAx Sapphire plans on opening its trading floor in 2025 costs and anticipated revenues from the trading floor were not included as part of any analysis for MIAx Sapphire for 2024.³³

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.*, market data, connectivity, ports, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not

driven by client activity (*e.g.*, message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (for example, 62% of the data center total expense amount is allocated to all provisions of connectivity), with smaller allocations to ToM, cToM and SLF (2.0% combined), and the remainder to the provision of ports, transaction execution, and membership services (36%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, connectivity and port service fees, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; some Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the

³¹ For example, MIAx Sapphire maintains 8 matching engines, MIAx maintains 24 matching engines, MIAx Pearl Options maintains 12 matching engines, MIAx Pearl Equities maintains 24 matching engines, and MIAx Emerald maintains 12 matching engines.

³² MIAx Options Exchange, MIAx Pearl Options Exchange, MIAx Pearl Equities Exchange, MIAx Emerald Exchange, and the MIAx Sapphire Exchange.

³³ Additionally, while MIAx Sapphire received approval as a national securities exchange on July 15, 2024, start-up costs associated with the launch of MIAx Sapphire were not included in the costs used for the 2024 electronic exchange projections.

Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange’s costs, the Exchange’s methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges’ interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange’s extensive Cost Analysis, the Exchange analyzed nearly every expense item in the

Exchange’s general expense ledger to determine whether each such expense relates to the provision of the market data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the market data feeds, and thus bears a relationship that is, “in nature and closeness,” directly related to the market data feeds. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide ToM, cToM, and SLF data feeds is \$59,161 (the

Exchange divided the annual cost for each of ToM, cToM, and SLF by 12 months, then added all three numbers together), as further detailed below.

Costs Related To Offering ToM, cToM, and SLF Data Feeds ³⁴

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the ToM, cToM, and SLF data feeds to its Members and other customers, as well as the percentage of the Exchange’s overall costs that such costs represent for such area (*e.g.*, as set forth below, the Exchange allocated approximately 6.2% of its overall Human Resources cost to offering ToM, cToM, and SLF data feeds).

Cost drivers	Allocated annual cost ^a	Allocated monthly cost ^b	% of all
Human Resources	\$631,203	\$52,600	6.2
Connectivity (external fees, cabling, switches, etc.)	511	43	2.0
Internet Services and External Market Data	0.00	0.00	0.0
Data Center	12,298	1,025	2.0
Hardware and Software Maintenance & Licenses	9,933	828	2.0
Depreciation	13,656	1,138	1.1
Allocated Shared Expenses	42,326	3,527	1.5
Total	709,927	59,161	4.6

^a The Annual Cost includes figures rounded to the nearest dollar.

^b The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering the market data feeds.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (“MIH”), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed,

managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market’s individual Human Resources expense. Then, managers and department heads assign a percentage of each employee’s time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining the market data feeds and performance thereof (primarily the Exchange’s network

infrastructure team, which spends a portion of their time performing functions necessary to provide market data). As described more fully above, the Exchange’s parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to the market data feeds. From that portion allocated to the Exchange that applied to the market data feeds, the Exchange then allocated a weighted average of 7.3% of each employee’s time from the above group to the market data feeds (which excludes an allocation for the recently hired Head of Data Services for the Exchange and its affiliates).

The Exchange also allocated Human Resources costs to provide the market data feeds to a limited subset of personnel with ancillary functions

³⁴ The Exchange notes that in recent non-transaction fee filings by the Exchange’s affiliated markets, those exchanges included a comparison and explanation where certain cost driver allocations and expense amounts materially differed for the same cost driver among the affiliated markets. *See, e.g.*, Securities Exchange Act Release No. 100041 (April 26, 2024), 89 FR 35868 (May 2, 2024) (SR-MIAX-2024-25). The Exchange believes a similar comparison and explanation is not appropriate here because the Exchange has yet

to commence operations and the allocations provided herein may change over time as the Exchange matures and its operations adjust based on its trading volumes and number of market data subscribers. In contrast, MIAX and MIAX Emerald are more mature markets with a steady market data subscriber base and a clearer estimation of their costs associated with producing and disseminating their market data feeds. Further, as a new exchange, MIAX Sapphire proposes to waive the fees for the market data feeds for a specified period of time in

order to build market share, which in turn, should attract more market data subscribers. If the Exchange does not attract as many market data subscribers as currently projected for the Cost Analysis, the Exchange may need to reduce its market data fees or waive the fees for a longer period of time. Accordingly, the Exchange believes it is reasonable to not provide a similar comparison of cost driver allocations until the Exchange has time to build its subscriber base for the market data feeds.

related to establishing and maintaining such market data feeds (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.*, only including those personnel who support functions related to providing market data feeds) and then applied a smaller allocation to such employees' time to the market data feeds (4.9%, which includes an allocation for the Head of Data Services). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to providing the market data feeds, whether it is a sales person selling a market data feed, finance personnel billing for market data feeds or providing budget analysis, or information security ensuring that such market data feeds are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing market data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing the market data feeds: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 7.3% of each of their employee's time assigned to the Exchange for the market data feeds, as stated above. Employees from these departments perform numerous functions to support the market data feeds, such as the configuration and maintenance of the hardware necessary to support the market data feeds. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting the market data feeds and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports

related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support the market data feeds, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the market data feeds related Human Resources costs to the extent that they are involved in overseeing tasks related to providing market data. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, Etc.)

The Connectivity cost driver includes cabling and switches required to generate and disseminate the market data feeds and operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete Member subscriptions to the market data feeds and the servers used at the Exchange's primary and back-up data centers specifically for the market data feeds. Further, as certain servers are only partially utilized to generate and disseminate the market data feeds, only the percentage of such servers devoted to generating and disseminating the market data feeds was included (*i.e.*, the capacity of such servers allocated to the ToM, cToM, and SLF data feeds).³⁵

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in

Princeton and Miami. External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange did not allocate any costs associated with internet services or external market data to the ToM, cToM or SLF data feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the market data feeds in the third-party data centers where the Exchange maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 2.0% to the applicable Data Center costs to the market data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of the Connectivity cost driver.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the market data feeds. Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 2.0% of its costs for Hardware and Software Maintenance and Licenses to the market data feeds.

Depreciation

All physical assets, software, and hardware used to provide the market data feeds, which also includes assets used for testing and monitoring of Exchange infrastructure to provide market data, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The vast majority of the software the Exchange uses for its operations to generate and disseminate the market data feeds has been developed in-house over an extended period. This software development also requires quality assurance and thorough testing to ensure the software works as intended. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the

³⁵ The Exchange understands that the Investors Exchange, Inc. ("IEX") and MEMX LLC ("MEMX") both allocated a percentage of their servers to the production and dissemination of market data to support market data fee proposals in 2022 and 2023. See Securities Exchange Act Release Nos. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR-IEX-2022-02) and 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04). The Exchange does not have insight into either IEX's or MEMX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its Connectivity cost driver to market data based on a percentage of overall cost, not on a per server basis.

Exchange intends to capitalize and depreciate with respect to the market data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the market data feeds. As noted above, the Exchange allocated 1.1% of its allocated depreciation costs to providing the market data feeds.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to the provision of the market data feeds. These general shared costs are integral to exchange operations, including its ability to provide the market data feeds. Costs included in general shared expenses include office space and office expenses (e.g., occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.³⁶ These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to the market data feeds pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including market data. Then, these costs were further allocated to sub-categories within the final categories, i.e., ToM, cToM, and SLF, as sub-categories of market data. In determining the percentage of general shared expenses allocated to market data that ultimately apply to the market data feeds, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation

percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to the market data feeds. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as ToM, cToM and SLF.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all market data products offered by the Exchange. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 1.5% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to the market data feeds also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster market data feeds than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance market data services, of which ToM, cToM, and SLF are main contributors.

* * * * *

Approximate Cost for ToM, cToM, and SLF per Month

After determining the approximate allocated monthly cost related to the market data feeds combined, the total monthly cost for the market data feeds of \$59,161 was divided by the total number of projected subscribers³⁷ to ToM, cToM and SLF that the Exchange anticipates will maintain market data subscriptions following the expiration of the waiver periods for each respective market data feed (29 Internal Distributors + 4 External Distributors = 33 total Distributors), to arrive at a cost

of approximately \$1,793 per month per subscription (rounded to the nearest dollar). Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, i.e., projected number of ToM, cToM, and SLF subscribers.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service (including market data) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal. For instance, in calculating the Human Resources expenses to be allocated to market data based upon the above described methodology, the Exchange allocated a higher percentage of dedicated network infrastructure personnel (7.3%) due to their focus on functions necessary to provide market data. The remaining 92.7% of the Human Resources expense was then allocated to connectivity services, port services, transaction services, and membership services. The Exchange did not allocate any other Human Resources expense for providing market data to any other employee group, outside of a smaller allocation of 4.9% for costs associated with certain specified personnel who work closely with and support network infrastructure personnel.

In total, the Exchange allocated 6.2% of its personnel costs (Human Resources) to providing the market data feeds. In turn, the Exchange allocated the remaining 93.8% of its Human Resources expense to membership services, transaction services, connectivity services, and port services. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including market data, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the

³⁶ The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors in a similar non-transaction fee filing. See Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04). The Exchange does not calculate its expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

³⁷ The methodology used by the Exchange to project the number of subscribers for each of the market data feeds once the Initial Waiver Period expires can be found under the section titled "Projected Revenue", below.

network. Without this equipment, the Exchange would not be able to operate the network and provide the market data feeds to its Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the market data feeds, but instead allocated approximately 1.1% of the Exchange's overall depreciation and amortization expense to the market data feeds combined. The Exchange allocated the remaining depreciation and amortization expense (98.9%) toward the cost of providing transaction services, membership services, connectivity services, and port services.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The revenue estimates are based upon the Exchange's projected number of Internal and External Distributors for each of the ToM, cToM, and SLF data feeds upon the expiration of the fee waiver periods for each market data feed and then annualized. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the market data feeds, the Exchange will have to be successful in attracting customers to a new exchange and then successfully retain those customers that wish to maintain subscriptions to the market data feeds or obtain new customers that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections, which will only be for part of the year. It is possible, however, that actual costs may be higher or lower. The proposed fee waivers for the market data feeds mean that the Exchange will receive no revenue from market data distribution in 2024. To the extent the Exchange sees growth in use of market data services in 2025, following the expiration of the Initial Waiver Period, it will begin to receive revenue to offset future cost increases. However, if use of market data services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees and expiration of the fee waivers. The Exchange expects that it may

propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (e.g., to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue ³⁸

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by establishing fees for market data subscribers. Subscribers to the ToM, cToM and SLF data feeds expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, connectivity service fees, membership and regulatory fees, and market data fees. Accordingly, the Exchange must

³⁸ For purposes of calculating projected annualized revenue for the market data feeds, the Exchange used projected monthly revenues for the market data feeds once the Initial Waiver Period expires.

cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide the market data feeds will equal \$709,927. Based on projected ToM, cToM and SLF subscribers once the waiver periods expire for the market data feeds, the Exchange projects to generate annual revenue of approximately \$726,000 for the market data feeds combined. The Exchange believes this represents a modest profit of 2.2% when compared to the cost of providing the market data feeds on an annualized basis once the waiver periods expire, which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). To determine the projected number of Distributors for each of the market data feeds, the Exchange reviewed its anticipated Distributor population from July 2024 based on Distributor on-boarding documents the Exchange received that showed interest in the market data products in the month preceding when the Exchange filed its proposal to implement the proposed fees, and assumed a 5% attrition rate. The 5% attrition rate is based upon the Exchange's experience on its affiliate exchanges where it has been observed that a percentage of subscribers do not continue their market data subscriptions after the expiration of fee waivers.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing the market data feeds versus the total projected revenue of the Exchange associated with the market data feeds.

The Exchange's affiliated markets, MIAX and MIAX Emerald, charge similar or higher rates for their respective ToM, cToM and MOR data feeds.³⁹ The Exchange's proposed fees for its market data feeds are also comparable to, or lower than, the fees for similar products charged by competing options exchanges. For example, for Internal Distributors of ToM and cToM, the Exchange proposes a lower fee than the fees charged by

³⁹ See MIAX Fee Schedule, Sections (6)(a) and (c); and MIAX Emerald Fee Schedule, Sections (6)(a) and (c).

Nasdaq ISE, LLC (“ISE”) for ISE’s Top Quote Feed⁴⁰ and NYSE Arca, Inc. (“Arca”) for Arca’s Top Datafeed⁴¹ and Complex Order Book data feed.⁴² Additionally, Nasdaq PHLX LLC (“PHLX”) assesses the same fees for the PHLX Orders data feed as proposed by the Exchange for its SLF data feed.⁴³

Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange’s affiliated markets leads to slightly different profit margins due to factors outside of the Exchange’s control (*i.e.*, more subscribers to ToM, cToM, and/or SLF).

The Exchange also reiterates that it proposes to waive the fees for the market data feeds for a defined period of time. The Exchange is owned by a holding company that is the parent company of five exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, IEX, which currently operates only one exchange, in its recent non-transaction fee filing allocated the entire amount of that same cost to a single exchange. This can result in lower profit margins for the

non-transaction fees proposed by IEX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms.⁴⁴ The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff should consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange’s efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where

higher costs alone are used to justify fees increases.

Accordingly, while the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits, the standard set forth in the Staff Guidance. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the exchange making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the exchange has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) “platform” competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the exchange taking supra-competitive profits. If the exchange demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee’s terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the exchange must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange’s understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery

⁴⁰ See ISE Options 7: Pricing Schedule, Section 10, Market Data, Section H. Nasdaq ISE Top Quote Feed, available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited June 13, 2024) (assessing Professional internal and external distributors \$3,000 per month, plus \$20 per month per controlled device).

⁴¹ See NYSE Proprietary Market Data Pricing Guide, Section 6.3, NYSE Arca Options (dated May 4, 2022), available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf (last visited June 13, 2024). Fees for the NYSE Arca Options Top Datafeed, which is the comparable product to ToM, are \$3,000 per month for access (internal use) and an additional \$2,000 per month for redistribution (external distribution), compared to the Exchange’s proposed fees of \$1,200 and \$2,000 for Internal and External Distributors, respectively. In addition, for its NYSE Arca Options Top Datafeed, NYSE Arca charges for three different categories of non-display usage, and user fees, both of which the Exchange does not propose to charge, causing the overall cost of NYSE Arca Options Top Datafeed to far exceed the Exchange’s proposed rates.

⁴² See NYSE Proprietary Market Data Pricing Guide, Section 6.4, NYSE Arca Options Complex Order Book (dated May 4, 2022), available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf (last visited June 13, 2024) (assessing an access fee of \$1,500 per month, plus a \$1,000 redistribution fee, \$1,000 non-display fee, and \$20 fee per professional user).

⁴³ See PHLX Options 7: Pricing Schedule, Section 10, Proprietary Data Feed Fees, PHLX Orders, available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (last visited June 13, 2024) (assessing internal distributors \$3,000 per month and external distributors \$3,500 per month for the PHLX Orders data feed).

⁴⁴ The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. See Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR-IEX-2022-02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. See, *e.g.*, *supra* notes 35 and 36. The Exchange does not believe a similar analysis would be useful here because it is part of a holding company that operates five different markets.

plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the market data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing the market data feeds with a reasonable mark-up. As discussed above, the Exchange estimates this fee filing will result in annual revenue of approximately \$726,000 once the fee waivers expire for the market data feeds, representing a potential mark-up of just 2.2% over the cost of providing the market data feeds. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup all of its expenses for providing the market data feeds (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the market data products are reasonable when compared to fees for comparable products, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the market data feeds.

Internal Distribution Fees. The Exchange believes it is reasonable to charge Internal Distribution fees because such data assists Internal Distributors in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees for ToM, cToM, and SLF are reasonable as they are similar to the amounts charged by at least one other exchange of comparable size for comparable data products, and lower than the fees charged by other exchanges for comparable data products.⁴⁵

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the market data feeds because vendors receive enumeration from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be

charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any ToM, cToM, or SLF data feeds, regardless of the number of customers to which that vendor redistributes the data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the market data feeds are reasonable.

Equitable Allocation and Not Unfairly Discriminatory

Overall. The Exchange believes that its proposed fees are reasonable, equitable, and not unfairly discriminatory because they are designed to align the proposed fees with services provided. The Exchange believes the proposed fees for the market data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the market data feeds. Any subscriber or vendor that chooses to subscribe to the market data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more of the ToM, cToM or SLF data feeds is based on objective differences in usage of each market data feed among different Members, which are still ultimately in the control of any particular Member. The Exchange believes the proposed pricing of the market data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the market data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the market data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the market data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the market data

feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing ToM, cToM, and/or SLF data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the ToM, cToM and SLF data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that decide to receive any market data feed of the Exchange (or its affiliates, MIAX, MIAX Pearl and MIAX Emerald), must first execute, among other things, the MIAX Exchange Group Data Agreement (the "Exchange Data Agreement").⁴⁶ Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the "internal use" of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.⁴⁷ External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,⁴⁸ and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the ToM, cToM and SLF data feeds by charging their customers fees for receipt of the Exchange's market data. Internal Distributors do not have the same ability to monetize the Exchange's market data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data feeds as External Distributors have greater usage rights to commercialize such market

⁴⁶ See Exchange Data Agreement, available at <https://www.miaxglobal.com/markets/us-options/all-options/market-data-vendor-agreements>.

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁵ See *supra* notes 42 and 43.

data and can adjust their own fee structures if necessary.

The Exchange believes it is reasonable and equitable to charge different fees for different market data products. While the ToM and cToM feeds provide top of market data for the Simple Order Book and Strategy Book respectively and have identical fees, the SLF provides a different data set and is thus priced accordingly to properly compete with comparable products offered by competing exchanges.⁴⁹

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.⁵⁰ Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing market data in compliance with the Exchange Data Agreement and Market Data Policies.

The Exchange believes the proposed market data fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of any of the market data feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees are equitably allocated and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁵¹ the Exchange does not believe that the proposed rule change would impose any burden on competition that

is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other exchanges that is not necessary or appropriate. In particular, market participants are not forced to subscribe to any of the market data feeds. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.⁵² The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees (as the Exchange proposes here for all three of its market data feeds) for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,⁵³ and Rule

19b-4(f)(2)⁵⁴ 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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2024-31 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-SAPPHIRE-2024-31. 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

⁴⁹ See *supra* note 43.

⁵⁰ See Section 6 of the Exchange's Market Data Policies, available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.

⁵¹ 15 U.S.C. 78f(b)(8).

⁵² See *supra* notes 42 and 43.

⁵³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁴ 17 CFR 240.19b-4(f)(2).

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–SAPPHIRE–2024–31 and should be submitted on or before November 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Sherry R. Haywood,
Assistant Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101377; File No. SR–CboeEDGX–2024–063]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Remove Volume Tier 2 of the Fee Schedule

October 17, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 9, 2024, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (“EDGX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change 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/edgx/), 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 applicable to its equities trading platform (“EDGX Equities”) by changing the required criteria applicable to Remove Volume Tier 2.³ The Exchange proposes to implement these changes effective October 1, 2024.

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 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Act, to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced

at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁵ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00003 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁶ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members 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.

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers two Remove Volume Tiers that each assess a reduced fee for Members’ qualifying orders yielding fee codes BB,⁷ N,⁸ and W⁹ where a Member reaches certain add volume-based criteria. The Exchange now proposes to amend the criteria of Remove Volume Tier 2. Currently, the criteria for Remove Volume Tier 2 is as follows:

- Remove Volume Tier 2 provides a reduced fee of \$0.00285 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes BB, N, or W) and a reduced fee of 0.28% of total dollar value for securities priced below \$1.00 where: (1) Member has an ADAV¹⁰ of greater than or equal to 0.30% of the TCV;¹¹ (2) Member has a total remove ADV¹²

⁵ See EDGX Equities Fee Schedule, Standard Rates.

⁶ *Id.*

⁷ Fee code BB is appended to orders that remove liquidity from EDGX (Tape B).

⁸ Fee code N is appended to orders that remove liquidity from EDGX (Tape C).

⁹ Fee code W is appended to orders that remove liquidity from EDGX (Tape A).

¹⁰ ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹¹ TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close, and the Russell Reconstitution Day.

¹² ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or

Continued

⁵⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange initially filed the proposed fee change on October 1, 2024 (SR–CboeEDGX–2024–062). On October 9, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (September 23, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

greater than or equal to 0.40% of the TCV; and (3) Member adds a Retail Pre Market Order ADV (*i.e.*, yielding fee code ZO) greater than or equal to 3 million shares.

Now, the Exchange proposes to amend the second and third prongs of the criteria in Remove Volume Tier 2 by adding alternative criteria to prong 2 and reducing the Retail Pre Market Order ADV requirement to prong 3. The proposed criteria is as follows:

- Proposed Remove Volume Tier 2 provides a reduced fee of \$0.00285 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes BB, N, or W) and a reduced fee of 0.28% of total dollar value for securities priced below \$1.00 where: (1) Member has an ADAV of greater than or equal to 0.30% of the TCV; (2) Member has a total remove ADV greater than or equal to 0.40% of the TCV or Member has a total remove ADV greater than or equal to 40 million shares; and (3) Member adds a Retail Pre Market Order ADV (*i.e.*, yielding fee code ZO) greater than or equal to 1.5 million shares.

The proposed amendment to Remove Volume Tier 2 is intended to slightly decrease the difficulty of achieving an existing opportunity to earn a reduced fee by providing an alternative for Members to increase their order flow to the Exchange (as provided under proposed prong 2) and reducing the volume requirement provided under proposed prong 3. Submitting increased order flow to the Exchange will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants. Incentivizing an increase in liquidity removing volume, through reduced fee opportunities, encourages liquidity removing Members on the Exchange to increase transactions and take execution opportunities, and liquidity adding Members to contribute to a deeper, more liquid market, on the Exchange, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹⁶ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members 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 Exchange believes that its proposal to remove [sic] Retail [sic] Volume Tier 2 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.

Specifically, the Exchange's proposed criteria for Remove Volume Tier 2 is not a significant departure from existing criteria, continues to be reasonably correlated to the reduced fee offered by the Exchange and other competing exchanges,¹⁷ and will continue to incentivize Members to submit order flow to the Exchange. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁸

including the Exchange,¹⁹ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality, and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon 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.

The Exchange further believes the proposed modifications to Remove Volume Tier 2 will provide a reasonable means to encourage liquidity removing orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity removing volume to the Exchange by offering them an opportunity to receive a reduced fee on qualifying orders. Not only is the proposed criteria in proposed Remove Volume Tier 2 slightly less difficult than the current criteria found in that tier, the proposed criteria is not a significant departure from existing criteria, is reasonably correlated to the reduced fee offered by the Exchange, and will continue to incentivize Members to submit order flow to the Exchange. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed revised tier and have the opportunity to meet the revised tier's criteria and receive the corresponding reduced fee 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 rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Remove Volume Tier 2. The

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See e.g., MIAx Pearl Equities Exchange Fee Schedule, Remove Volume Tier, available at [MIAx Pearl Equities Fee Schedule_12012023.pdf](https://www.miaxglobal.com/Pearl_Equities_Fee_Schedule_12012023.pdf) ([miaxglobal.com](https://www.miaxglobal.com)); MEMX Equities Fee Schedule, Liquidity Removal Tier, available at MEMX Equities Fee Schedule—MEMX Exchanges ([memxtrading.com](https://www.memxtrading.com)).

¹⁸ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁹ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

subset thereof, per day. ADV is calculated on a monthly basis.

Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for reduced fees offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding reduced fee.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further 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."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to the Remove Volume Tier 2 will apply to all Members equally in that all Members are eligible for the proposed revised tier, have a reasonable opportunity to meet the proposed tier's criteria and will receive the reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as they are intended to increase the competitiveness of EDGX by amending an existing pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes 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 that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.²⁰ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues 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."²¹ 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' . . .".²² 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.

²⁰ *Supra* note 3.

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²² *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SRNYSEArca–2006–21)).

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 Act²³ and paragraph (f) of Rule 19b–4²⁴ 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 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–CboeEDGX–2024–063 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–CboeEDGX–2024–063. 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

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b–4(f).

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-CboeEDGX-2024-063 and should be submitted on or before November 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-24471 Filed 10-22-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-653, OMB Control No. 3235-0703]

Proposed Collection; Comment Request; Extension: Regulation SCI, Form SCI

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 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in Regulation Systems Compliance and Integrity ("Regulation SCI") (17 CFR 242.1000-1007) and Form SCI (17 CFR 249.1900) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Regulation SCI requires certain key market participants to, among other things: (1) have comprehensive policies and procedures in place to help ensure the robustness and resiliency of their technological systems, and also that their technological systems operate in compliance with the federal securities laws and with their own rules; and (2) provide certain notices and reports to the Commission to improve Commission oversight of securities market infrastructure.

Regulation SCI advances the goals of the national market system by enhancing the capacity, integrity, resiliency, availability, and security of the automated systems of entities important to the functioning of the U.S. securities markets, as well as reinforcing the requirement that such systems operate in compliance with the Exchange Act and rules and regulations thereunder, thus strengthening the infrastructure of the U.S. securities markets and improving its resilience when technological issues arise. In this respect, Regulation SCI establishes an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems.

Respondents consist of national securities exchanges and associations, registered clearing agencies, exempt clearing agencies, plan processors, and alternative trading systems. There are currently 48 respondents, and the Commission staff estimates that, on average, 2 new respondents may become SCI entities each year, 1 of which would be a self-regulatory organization ("SRO"). Accordingly, Commission staff estimates that over the next three years there will be an average of 50 respondents per year.

In addition, in December 2020, the Commission adopted amendments to Regulation SCI in connection with updates to the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system ("NMS") stocks ("Infrastructure Amendments"). Specifically, the Commission adopted a definition of "SCI competing consolidator" that will subject competing consolidators to Regulation SCI, after a transition period, if they are above a specified consolidated market data gross revenue threshold.¹ The Infrastructure Amendments increased the number of

respondents to the collections of information in Regulation SCI, and the Commission estimates that seven competing consolidators will meet this definition and be subject to the requirements of Regulation SCI.²

Rule 1001(a) requires each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 4,511 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 12,760 hours. The Commission staff estimates that the 7 new respondents would incur, on average, an annual initial internal cost of compliance of \$1,696,578, as well as outside legal or consulting costs of \$305,500. In addition, all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$4,801,060.

Rule 1001(b) requires each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in a manner that complies with the Exchange Act and the rules and regulations thereunder and the entity's rules and governing documents, as applicable. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 1,755 hours, and the annual ongoing recordkeeping burden for all respondents will be, on average, 8,105 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$628,160, as well as outside legal or consulting costs of \$175,500. In addition, all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,881,660.

Rule 1001(c) requires each SCI entity to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI

¹ See Securities Exchange Act Release No. 34-90610 (December 9, 2020), 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("Infrastructure Adopting Release").

² Some of these respondents were estimated to incur no, or only part of, the estimated initial burdens because they were already subject to Regulation SCI (*i.e.*, as plan processors, SROs or affiliates of SROs).

²⁵ 17 CFR 200.30-3(a)(12).

personnel of potential SCI events. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 741 hours, and the annual ongoing recordkeeping burden for all respondents will be, on average, 2,145. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$309,868, and all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$958,485.

Rule 1004 requires each SCI entity to establish standards for the designation of certain members or participants for BC/DR plan testing, to designate members or participants in accordance with these standards, to require participation by designated members or participants in such testing at least annually, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities. The Commission staff estimates that the total annual initial recordkeeping burden for 9 new respondents will be 2,700 hours, and the annual ongoing recordkeeping burden for all respondents that are not plan processors will be, on average, 7,425 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$902,865. In addition, all respondents that are not plan processors will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,217,600. In addition, the Commission staff estimates that the 2 plan processor respondents will incur an estimated ongoing annual cost of \$108,000 for outside legal services (\$54,000 per plan processor respondent × 2 respondents).

Rule 1002(b)(1) requires each SCI entity, upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, to notify the Commission immediately. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 440 hours. The Commission staff estimates that respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$151,882.50.

Rule 1002(b)(2) requires each SCI entity, within 24 hours of any responsible SCI personnel having a reasonable basis to conclude that the SCI event has occurred, to submit a written notification to the Commission pertaining to the SCI event on a good faith, best efforts basis. These notifications are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55

respondents will be, on average, 6,600 hours. The Commission staff estimates that respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,427,325.

Rule 1002(b)(3) requires each SCI entity to provide updates to the Commission pertaining to an SCI event on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until the SCI event is resolved and the SCI entity's investigation of the SCI event is closed. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 578 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$202,235.

Rule 1002(b)(4) requires each SCI entity to submit written interim reports, as necessary, and a written final report regarding an SCI event to the Commission. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 9,625 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$3,795,800.

Rule 1002(b)(5) requires each SCI entity to submit to the Commission quarterly reports containing a summary description of any systems disruption or systems intrusion that has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity's operations or on market participants. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 8,800 hours. The Commission staff estimates that respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$3,329,040.

In addition, the Commission staff estimates that all 55 respondents will incur, on average, annual costs of \$319,000 for outside legal advice in preparation of certain notifications required by Rule 1002(b).

Rule 1002(c)(1)(i) requires each SCI entity, promptly after any responsible SCI personnel has a reasonable basis to conclude that an SCI event (other than a systems intrusion) has occurred, to disseminate certain information to its members or participants. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 1,155 hours. The Commission staff estimates

that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$506,815.

Rule 1002(c)(1)(ii) requires each SCI entity, when known, to promptly disseminate additional information about an SCI event (other than a systems intrusion) to its members or participants. Rule 1002(c)(1)(iii) requires each SCI entity to provide to its members or participants regular updates of any information required to be disseminated under Rules 1002(c)(1)(i) and (ii) until the SCI event is resolved. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 6,435 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,841,795.

Rule 1002(c)(2) requires each SCI entity to disseminate certain information regarding a systems intrusion to its members or participants, and provides an exception when the SCI entity determines that dissemination of such information would likely compromise the security of its SCI systems or indirect SCI systems, or an investigation of the systems intrusion, and documents the reasons for such determination. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 550 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$242,330.

In addition, the Commission staff estimates that all 55 respondents will incur, on average, annual costs of \$182,600 for outside legal advice in preparation of certain notifications required by Rule 1002(c).

Rule 1003(a)(1) requires each SCI entity to submit to the Commission quarterly reports describing completed, ongoing, and planned material changes to its SCI systems and security of indirect SCI systems during the prior, current, and subsequent calendar quarters. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 27,500 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$9,204,800.

Rule 1003(a)(2) requires each SCI entity to promptly submit a supplemental report notifying the Commission of a material error in or material omission from a report

previously submitted under Rule 1003(a)(1). These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 825 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$293,040.

Rule 1003(b)(1) requires each SCI entity to conduct an SCI review of its compliance with Regulation SCI not less than once each calendar year, with an exception for penetration test reviews, which are required to be conducted not less than once every three years. Rule 1003(b)(1) also provides an exception for assessments of SCI systems directly supporting market regulation or market surveillance, which are required to be conducted at a frequency based on the risk assessment conducted as part of the SCI review, but in no case less than once every three years. Rule 1003(b)(2) requires each SCI entity to submit a report of the SCI review to senior management no more than 30 calendar days after completion of the review. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 37,950 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$13,623,225.

Rule 1003(b)(3) requires each SCI entity to submit the report of the SCI review to the Commission and to its board of directors or the equivalent of such board, together with any response by senior management, within 60 calendar days after its submission to senior management. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 55 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$25,410.

In addition, the Commission staff estimates that all respondents will incur, on average, annual costs of \$2,750,000 for outside legal advice in preparation of certain notifications required by Rule 1003(b).

Rule 1006 requires each SCI entity, with a few exceptions, to file any notification, review, description, analysis, or report to the Commission required under Regulation SCI electronically on Form SCI through the EFFS. An SCI entity will submit to the Commission an EAUF to register each individual at the SCI entity who will access the EFFS system on behalf of the

SCI entity. The Commission staff estimates that the total annual initial burden for 7 new respondents will be 2 hours, and the annual ongoing burden for all respondents will be, on average, 8 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$903. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$3,795, as well as outside costs to obtain a digital ID of \$2,750.

Rule 1002(a) requires each SCI entity, upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, to begin to take appropriate corrective action. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 741 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 2,145 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$309,868. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$949,190.

Rule 1003(a)(1) requires each SCI entity to establish reasonable written criteria for identifying a change to its SCI systems and the security of indirect SCI systems as material. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 741 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 1,485 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$309,868. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$711,095.

Regulation SCI also requires SCI entities to identify certain types of events and systems. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 1,287 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 2,145 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$507,936. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$949,190.

Rules 1005 and 1007 establish recordkeeping requirements for SCI entities other than SROs. The Commission staff estimates that for 6

new respondents that are not SROs the average annual initial burden would be 935 hours, and the annual ongoing burden for all 19 respondents will be, on average, 475 hours. The Commission staff estimates that 6 new respondents would incur an estimated internal initial internal cost of compliance of \$72,930, as well as a one-time cost of \$5,400 to modify existing recordkeeping systems. In addition, all 19 respondents will incur, on average, an estimated ongoing internal cost of compliance of \$37,050.

The Commission estimates that the increase in the number of SCI entities raises the total industry annual burden hours to 150,619 hours and costs to \$3,848,749 respectively.

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 to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 23, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Information Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: October 18, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-24577 Filed 10-22-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20780 and #20781; ALASKA Disaster Number AK-20005]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4836–DR), dated 10/16/2024.

Incident: Flooding.

Incident Period: 08/05/2024 through 08/06/2024.

DATES: Issued on 10/16/2024.

Physical Loan Application Deadline Date: 12/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/16/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

City and Borough of Juneau.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 207806 and for economic injury is 207810.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–24508 Filed 10–22–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20753 and #20754; GEORGIA Disaster Number GA–20014]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Georgia

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4830–DR), dated 10/09/2024.

Incident: Hurricane Helene.

Incident Period: 09/24/2024 and continuing.

DATES: Issued on 10/16/2024.

Physical Loan Application Deadline Date: 12/09/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of GEORGIA, dated 10/09/2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Ben Hill, Irwin, Taliaferro, Turner

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–24566 Filed 10–22–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20778 and #20779; FLORIDA Disaster Number FL–20016]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for

the State of Florida (FEMA–4834–DR), dated 10/16/2024.

Incident: Hurricane Milton.

Incident Period: 10/05/2024 and continuing.

DATES: Issued on 10/16/2024.

Physical Loan Application Deadline Date: 12/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/16/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Brevard, Charlotte, Citrus, Clay, Collier, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Lucie, Sumter, Volusia, and the Miccosukee Tribe of Indians of Florida.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 207788 and for economic injury is 207790.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,
Deputy Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–24525 Filed 10–22–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20541 and #20542; ALASKA Disaster Number AK–20004]

Presidential Declaration of a Major Disaster for the State of Alaska

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4836–DR), dated 10/16/2024.
Incident: Flooding.
Incident Period: 08/05/2024 through 08/06/2024.
DATES: Issued on 10/16/2024.
Physical Loan Application Deadline Date: 12/16/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.
FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President’s major disaster declaration on 10/16/2024, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.
The following areas have been determined to be adversely affected by the disaster:
Primary Counties (Physical Damage and Economic Injury Loans): City and Borough of Juneau
Contiguous Counties (Economic Injury Loans Only):
Alaska: Chatham REAA, Haines Borough, Petersburg Borough
The Interest Rates are:

	Percent
For Physical Damage:	

	Percent
Homeowners with Credit Available Elsewhere	5.625
Homeowners without Credit Available Elsewhere	2.813
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 205416 and for economic injury is 205420.
(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,
Deputy Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–24507 Filed 10–22–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20711 and #20712; GEORGIA Disaster Number GA–20013]

Presidential Declaration Amendment of a Major Disaster for the State of Georgia

AGENCY: Small Business Administration.
ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4830–DR), dated 09/30/2024.
Incident: Hurricane Helene.
Incident Period: 09/24/2024 and continuing.
DATES: Issued on 10/16/2024.
Physical Loan Application Deadline Date: 11/29/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.
FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.
SUPPLEMENTARY INFORMATION: The notice of the President’s major disaster

declaration for the State of Georgia, dated 09/30/2024, is hereby amended to include the following areas as adversely affected by the disaster:
Primary Counties (Physical Damage and Economic Injury Loans): Taliaferro.
All other information in the original declaration remains unchanged.
(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,
Deputy Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–24485 Filed 10–22–24; 8:45 am]
BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12566]

Title: Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization (IMO) Maritime Safety Committee (MSC 109) Meeting

The Department of State will conduct a public meeting at 10:00 a.m. on Tuesday, November 26, 2024, both in-person at Coast Guard Headquarters in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the 109th session of the International Maritime Organization’s (IMO) Maritime Safety Committee (MSC 109) to be held in London, United Kingdom, from Monday, December 2, 2024, to Friday, December 06, 2024.
Members of the public may participate up to the capacity of the teleconference line, which will 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, and the teleconference line will be provided to those who RSVP. To RSVP, participants should contact the meeting coordinator, LCDR Emily Rowan, by email at Emily.K.Rowan@uscg.mil. LCDR Rowan will provide access information for in-person and virtual attendance.
The agenda items to be considered include:
—Adoption of the agenda; report on credentials
—Decisions of other IMO bodies
—Amendments to mandatory instruments
—Goal-based new ship construction standards
—Development of a goal-based instrument for maritime autonomous surface ships (MASS)
—Development of a safety regulatory framework to support the reduction of

- GHG emissions from ships using new technologies and alternative fuels
- Revision of the Guidelines on Maritime Cyber Risk Management (MSC-FAL.1/Circ.3/Rev.2) and identification of next steps to enhance maritime cybersecurity
- Measures to enhance maritime security
- Piracy and armed robbery against ships
- Unsafe mixed migration by sea
- Formal safety assessment
- Ship system and equipment (Report of the tenth session of the Sub-Committee)
- Navigation, communications and search and rescue (Report of the eleventh session of the Sub-Committee)
- Carriage of cargoes and containers (Urgent matters emanating from the tenth session of the Sub-Committee)
- Implementation of IMO Instruments (Report of the tenth session of the Sub-Committee)
- Pollution Prevention and Response (Report of the eleventh session of the Sub-Committee)
- Domestic ferry safety
- Application of the Committee's method of work
- Work programme
- Election of Chair and Vice-Chair for 2025
- Any other business
- Consideration of the report of the Committee on its 109th session

Please note: The IMO may, on short notice, adjust the MSC 109 agenda to accommodate any constraints associated with the meeting. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to participate should contact the meeting coordinator, LCDR Emily K. Rowan at Emily.K.Rowan@uscg.mil, by phone at (202) 372-1376, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509 no later than November 12, 2024, 14 days prior to the meeting. Requests made after November 12, 2024, might not be able to be accommodated. The meeting coordinator will provide the teleconference information, facilitate the building security process, and requests for reasonable accommodation. 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 advanced request).

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. 2024-24502 Filed 10-22-24; 8:45 am]

BILLING CODE 4710-09-P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 526 (Sub-No. 22)]

Notice of Railroad-Shipper Transportation Advisory Council Vacancy

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of vacancy on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

SUMMARY: The Board hereby gives notice of a vacancy on RSTAC for a small shipper representative. The Board seeks nominations for candidates to fill this vacancy.

DATES: Nominations are due on November 18, 2024.

ADDRESSES: Nominations may be submitted via e-filing on the Board's website at www.stb.gov. Submissions will be posted to the Board's website under Docket No. EP 526 (Sub-No. 22).

FOR FURTHER INFORMATION CONTACT: John Dalton at (771) 201-1070. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701-47, 11101-24), the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901-07), as well as railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323-27).

The ICC Termination Act of 1995 (ICCTA), enacted on December 29, 1995, established RSTAC to advise the Board's Chair; the Secretary of Transportation; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail

transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. ICCTA instructs RSTAC to endeavor to develop private sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The members of RSTAC also prepare an annual report concerning RSTAC's activities. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC's 15 appointed members consist of representatives of small and large shippers, and small and large railroads. These members are appointed by the Board's Chair. In addition, members of the Board and the Secretary of Transportation serve as ex officio members. Of the 15 appointed members, nine are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Board's Chair, and at least four of the voting members must be representatives of Class II or III railroads. The remaining voting member has traditionally been an at-large representative. The other six members—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but may participate in RSTAC deliberations.

Meetings of RSTAC are required by statute to be held at least semi-annually. RSTAC typically holds meetings quarterly at the Board's headquarters in Washington, DC, although some meetings are held virtually or in other locations.

The members of RSTAC receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses. Currently, RSTAC members have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States Government. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RSTAC, as long as they do so in a representative capacity, rather than an individual capacity. See

Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns, 79 FR 47,482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

Each RSTAC member is appointed for a term of three years. No member will be eligible to serve in excess of two consecutive terms. However, a member may serve after the expiration of his or her term until a successor has taken office.

Due to the expiration of an RSTAC member's term, a vacancy exists for a small shipper representative. Nominations for candidates to fill the vacancy should be submitted in letter form, identifying the name of the candidate, providing a summary of why the candidate is qualified to serve on RSTAC, and containing representations that the candidate is willing to serve as an RSTAC member effective immediately upon appointment. Candidates may nominate themselves. The Board's Chair is committed to having a committee reflecting diverse communities and viewpoints and strongly encourages the nomination of candidates from diverse backgrounds. RSTAC candidate nominations should be filed with the Board by November 18, 2024. Members selected to serve on RSTAC are chosen at the discretion of the Board's Chair.

Please note that submissions will be posted on the Board's website under Docket No. EP 526 (Sub-No. 22) and can also be obtained by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at RCPA@stb.gov or (202) 245-0238.

Authority: 49 U.S.C. 1325.

Decided: October 18, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2024-24576 Filed 10-22-24; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA-2024-2434]

Notice of Virtual Meeting With Industry

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of virtual meeting for Prospective Manufacturers of Airborne Position Reference Tools (APRT).

SUMMARY: The FAA is holding a virtual industry event to educate companies

interested in manufacturing supplemental surveillance tools to increase airborne situational awareness. These "Airborne Position Reference Tools" (APRTs) will be available for purchase and operation by non-federal entities (e.g., airport authorities). APRTs are intended for use in air traffic control towers that are staffed by non-federally employed controllers and not equipped with Standard Terminal Automation Replacement Systems (STARS).

DATES: Wednesday December 11, 2024; 1:30-4:30 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Michael Schoen, Advanced Systems Design Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-9841; email: michael.j.schoen@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory authority

The FAA is authorized to regulate aviation technologies that are manufactured for operation by non-federal entities in the National Airspace System (NAS). (49 U.S.C. 44708; 40102(4)(c).) The Advanced Systems Design Service is tasked to assess the suitability of technologies that industry proposes for non-federal use in the NAS. (14 CFR part 171.75.)

II. Background

Please join the Federal Aviation Administration (FAA) for a virtual industry event to educate companies interested in manufacturing and selling supplemental surveillance tools to increase airborne situational awareness. These "Airborne Position Reference Tools" (APRTs) will be available for purchase and operation by non-federal entities (e.g., airport authorities). They are intended for use in air traffic control towers that are staffed by non-federally employed controllers and not equipped with Standard Terminal Automation Replacement Systems (STARS).

The FAA does not operate every Airport Traffic Control Tower (ATCT) in the National Airspace System (NAS). Some towers are staffed by non-federally employed controllers, either via the FAA Contract Tower (FCT) program, or with non-federal funding. A number of these "non-FAA" towers do not have a Certified Tower Radar Display (i.e., STARS). Without radar data the controllers at those towers must rely on their own visual observations, and their radio communications with pilots. Many of these towers desire a tool that supplements situational awareness by providing controllers with a digital picture of their airspace.

APRTs may only be used to supplement controllers' visual observations, and their radio communications with pilots. APRTs may not be used as the basis for maintaining separation between aircraft and they may not connect to FAA networks and/or FAA equipment.

The FAA is not conducting an acquisition for APRTs. Sponsors who want to procure and operate an APRT must purchase FAA approved systems/services. The FAA has developed minimum requirements that prospective manufacturers must meet and an approval process they must follow. Multiple vendors' systems/services may be approved for non-federal use under the APRT umbrella.

On Wednesday December 11th from 1:30-4:30 p.m. the FAA will virtually brief that information to interested parties and entertain questions. We will also announce the date on which prospective manufacturers may submit their design approval requests.

III. How To Register for This Event

This event will be held via video conference. Please use the following link to register for an event invitation: <https://liveeventsfaa.wufoo.com/forms/industry-day-for-airborne-position-reference-tools/>.

Issued in Washington, DC, on October 9, 2024.

Shelly A. Beauchamp,

Team Manager, Advanced Systems Design Service (A/JW-121).

[FR Doc. 2024-24764 Filed 10-22-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA-2024-2488]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: "Generic Clearance for Customer Interactions"

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Customer Interactions provide the Federal Aviation Administration valuable information and connect the agency to the public.

The Federal Aviation Administration would utilize a Generic Clearance for Customer Interactions that support the Agency's mission to become more accessible and transparent.

DATES: Written comments should be submitted by December 23, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket:
www.regulations.gov (Enter docket number into search field).

By mail: Barbara Hall 10101 Hillwood Parkway, Fort Worth, TX 76101.

FOR FURTHER INFORMATION CONTACT:

Barbara Hall by email at: Barbara.l.hall@faa.gov; phone: 817-222-5448

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120-0772.

Title: Generic Clearance for Customer Interactions.

Form Numbers: NA.

Type of Review: Extensional of an information collection.

Background: Individual citizens or organizations may voluntarily respond to this collection. This collection of information will support the Federal Aviation Administration's mission. The Agency will collect qualitative and quantitative data that informs scientific research; aviation assessments and monitoring efforts; validate models or tools; and enhance the quantity and quality of data collected across communities. The agency will use this data to create an avenue to incorporate local knowledge and needs, and to contribute to increased data sharing, open data, and government transparency. The Federal Aviation Administration may sponsor the collection of this type of information in connection with aviation projects. All such collections will follow Agency policies and regulations. Collections under this generic ICR will be from volunteers who participate on their own initiative through an open and transparent process.

Respondents: 110,000 Individual citizens or organizations who interact

with the agency may voluntarily respond to this collection.

Frequency: As Needed.

Estimated Average Burden per

Response: 5 minutes.

Estimated Total Annual Burden:
18,330.

Issued in Fort Worth, TX, on October 17, 2024.

Barbara Hall,

Information Collection Officer, ASP-110, AFN.

[FR Doc. 2024-24468 Filed 10-22-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability for a Written Re-Evaluation of the Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, Council on Environmental Quality NEPA-implementing regulations, and FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, the FAA is announcing the availability of the Written Re-Evaluation for the Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch Vehicle Program regarding updates to the forward heat shield interstage, sonic boom coverage, use of the deluge system during return to launch site landings, and use of US Coast Guard Safety Zones at the SpaceX Boca Chica Launch Site in Cameron County, Texas.

FOR FURTHER INFORMATION CONTACT:

Amy Hanson, FAA Environmental Specialist, Federal Aviation Administration, 800 Independence Ave. SW, Suite 325, Washington, DC 20591; phone 847-243-7609; email Amy.Hanson@faa.gov.

SUPPLEMENTARY INFORMATION: The Written Re-Evaluation evaluated whether supplemental environmental analysis was needed to support the FAA Office of Commercial Space Transportation decision to issue a modification to SpaceX's vehicle operator license for the operation of the Starship/Super Heavy launch vehicle at its existing Boca Chica Launch Site in

Cameron County, Texas. The affected environment and environmental impacts of Starship/Super Heavy operations and the construction of launch-related infrastructure at the Boca Chica Launch Site were analyzed in the 2022 *Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas (2022 PEA)*. The FAA issued a Mitigated Finding of No Significant Impact and Record of Decision based on the 2022 PEA on June 13, 2022.

SpaceX recently provided the FAA with additional information regarding updates to the forward heat shield interstage, sonic boom coverage, use of the deluge system during return to launch site landings, and use of US Coast Guard Safety Zones.

Based on the analysis within the Written Re-Evaluation of the additional information, the FAA concluded that the issuance of a modification to SpaceX's vehicle operator license for Starship/Super Heavy operations conforms to the prior environmental documentation, that the data contained in the 2022 PEA remains substantially valid, that there are no significant environmental changes, and all pertinent conditions and requirements of the prior approval have been met or will be met in the current action.

Therefore, preparation of a supplemental or new environmental document is not necessary to support the Proposed Action.

The Written Re-Evaluation is available at: www.faa.gov/space/stakeholder_engagement/spacex_starship.

Issued in Washington, DC, on: October 12, 2024.

Stacey Molinich Zee,

Manager, Operations Support Branch, Office of Commercial Space Transportation.

[FR Doc. 2024-24561 Filed 10-22-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0237]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Casey's Services Company, USDOT #162449

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on the application from Casey's Services Company, USDOT No. 162449, (Casey) for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop), which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before November 22, 2024.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2024-0237 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the online instructions for submitting comments. See the Public Participation and Request for Comments section below for further information.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001

- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2024-0237) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA; (202) 366-9209; MCPSV@dot.gov.

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2024-0237), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov/docket/FMCSA-2024-0237/document>, click on this notice, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief,

Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

C. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0237/document> and choose the document to review. To view comments, click this notice, then click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

D. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed under the "Department Wide System of Records Notices" at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edit and are searchable by the name of the submitter.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the

exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Casey's Request

Casey seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Casey asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Casey submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022, FMCSA denied Intellistop's application for an industry-wide exemption (87 FR 61133) to allow all motor carriers to operate CMVs equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Consistent with the October 7, 2022, decision, the Agency seeks public comment on Casey's carrier-specific exemption application.

A copy of Casey's application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Casey's application for a five-year exemption from 49 CFR 393.25(e) to allow the company to operate CMVs equipped with Intellistop's module which pulses the rear clearance, identification and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-24574 Filed 10-22-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0069]

Agency Information Collection Activities; Notice and Request for Comment; Automated Driving Systems 2.0: A Vision for Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comments on an extension of a currently approved information collection.

SUMMARY: NHTSA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement

of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB extension approval titled "Automated Driving Systems 2.0: A Vision for Safety" and is identified by OMB Control Number 2127-0723, currently approved through February 28, 2025. The burden hour calculations have been adjusted to reflect a reduction in annual respondents resulting in a reduction in burden hours from 12,000 annually to 2,400 annually.

DATES: Comments must be submitted on or before December 23, 2024.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2024-0069 through any of the following methods:

- **Electronic submissions:** Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail or Hand Delivery:** Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Debbie Sweet, Office of Vehicle Safety Research (NSR-010), (202) 366-7179, National Highway Traffic Safety Administration, W46-417, U.S. Department of

Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (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) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Automated Driving Systems 2.0: A Vision for Safety.

OMB Control Number: 2127–0723.

Form Number(s): None.

Type of Request: Extension of a currently approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of

Approval: 3 years from date of approval.

Summary of the Collection of Information:

In September 2017, NHTSA published a policy document titled, *Automated Driving Systems 2.0: A Vision for Safety (ADS 2.0)*. Recognizing the potential that Automated Driving Systems (ADSs) have to enhance safety and mobility, this policy document set out an approach to enable the safe deployment of ADS-equipped vehicles. *ADS 2.0* contains 12 priority safety design elements, each of which contains safety

goals and approaches that could be used to achieve those safety goals. Entities engaged in ADS testing and deployment may demonstrate how they address—via industry best practices, their own best practices, or other appropriate methods—the safety elements by publishing a Voluntary Safety Self-Assessment (VSSA). The VSSA is the medium of collection of information for *ADS 2.0*. NHTSA provides the VSSA Index on the agency's website as a pointer system for entities' VSSAs.

Description of the Need for the Information and Proposed Use of the Information:

The VSSA is intended to demonstrate to the public (particularly States and consumers) that entities are: (1) considering the safety aspects of ADSs; (2) communicating and collaborating with DOT; (3) encouraging the self-establishment of industry safety norms for ADSs; and (4) building public trust, acceptance, and confidence through transparent testing and deployment of ADSs. It also allows companies an opportunity to showcase their approach to safety, without needing to reveal proprietary intellectual property.

Entities collecting information and disclosing that information via a Voluntary Safety Self-Assessment have been given the flexibility to disclose the information in a format deemed appropriate for that particular entity. Each entity has selected the layout, presentation, and verbiage structure that best fits its needs and goals.

Members of the public can retrieve the VSSA in order to understand the technology, learn about how the testing and safety elements are incorporated in the design and function of a system or vehicle, and become aware of the testing and deployments in locations around the country.

State stakeholders have expressed they would use the information in the VSSA to assess the safety of ADSs on their roadways. Those States looking to require application and permission to test and deploy ADSs review the VSSA prior to issuing the permit. The States also use information in the VSSA to communicate with law enforcement and first responders as well as to educate the public.

Other consumer-based stakeholders access the information in the VSSA to gather information to identify risk, inform decisions, and educate, among other uses.

Affected Public: Entities involved in the testing and deployment of ADS.

Estimated Number of Respondents: 4.

Frequency: Once.
Estimated Total Annual Burden Hours: 2,400 hours.

Estimating Respondents for this Information Collection: This extension of a currently approved collection includes changes in the annual respondents and thus a decrease in the annual burden hours to the public. The changes are based on observations of the current and past information collections.

NHTSA has combined multiple public lists of ADS entities to determine the potential universe of potential entities that may (past or future) develop a VSSA. Accessed on October 3, 2024, NHTSA combined entities that were listed on the current VSSA Index, the California Department of Motor Vehicle Autonomous Vehicles list of permit holders (testing with a driver, driverless testing, and deployment), and the entities that have submitted ADS incident reports through the Standing General Order. Staff then reviewed the list to determine which entities were no longer operational in the United States. This provided a universe as well as a grounding in the size of the industry, which entities have developed a VSSA in years past, and whether newer entrants are present in the universe such that they may develop a VSSA. The result of these steps was 59 ADS entities.

Of the 59 entities, 27 have developed and made public a VSSA since the collections began according to the VSSA Index. NHTSA is not aware that any of the 27 have updated the full VSSA during that time period. Two of those entities have released an appendix with separate information not included in *ADS 2.0*. NHTSA assumes these entities will not update their VSSA in the next three years. Table 1 provides a list of VSSA publication date since 2017. The average over the lifetime of *ADS 2.0* is three VSSAs per year. Perhaps more reflective of the recent industry, the average over the current collection (three years) is 4 VSSAs per year.

TABLE 1—VSSA DISSEMINATION TO DATE

Release	Number
Webpage Only (no structured VSSA)	2
Inactive pointer location	4
2018	1
2019	1
2020	3
2021	4
2022	2
2023	6
2024	4
Seven-year average	3
Three-year Average (period of current ICR)	4

Taking into account the universe established (59 entities) and those that have disseminated a VSSA or suggested a web page through the VSSA Index (27), NHTSA believes there is a potential for another 32 entities to publish a VSSA; however, the maturity of the entity itself, the development of the ADS, and the partnerships established within the industry, NHTSA does not assume all 32 will develop a VSSA over the coming three years. This is bolstered by the fact that it has taken seven years for dissemination of 27 VSSAs.

NHTSA will use the most recent three-year average of four VSSAs per year for an estimation of VSSA dissemination or publication for the duration of this information collection extension. Therefore, the number of respondents annually is four and the frequency is once per year.

Estimating Burden for Each Respondent: Components of the Voluntary Guidance in *ADS 2.0* and public disclosure of the VSSA have not changed since release in 2017. Therefore, these estimates of time to summarize how an entity is addressing the safety elements remains the same as the current information collection. NHTSA has not received comments that these estimates are erroneous.

Development of a VSSA is expected to involve burden for format, content, and summary, varying by safety element. NHTSA estimates that each entity will spend approximately 600 hours to develop and disseminate a VSSA. Table 2 provides a breakdown of burden hours by safety element.

TABLE 2—BURDEN HOURS ESTIMATES FOR VSSA, PER SAFETY ELEMENT

Safety element in voluntary guidance	Burden hours for VSSA development
A. System Safety	30
B. Operational Design Domain	25
C. Object and Event Detection and Response	45
D. Fallback	90
E. Validation Methods	90
F. Human Machine Interface	25
G. Vehicle Cybersecurity	25
H. Crashworthiness	25
I. Post-Crash ADS Behavior	25
J. Data Recording	90
K. Consumer Education and Training	45
L. Federal, State, and Local Laws	85
Total Burden Hours Per ADS	600

TABLE 3—CALCULATION OF ANNUAL BURDEN HOURS

Estimated Annual Respondents	4
Estimated Burden Hours for Voluntary Assessment Dissemination	600
Total Estimated Burden Hours for Industry per Year	2,400

The change reflected in this extension is a reduction of 9,600 burden hours annually.

Estimated Total Annual Burden Cost: \$282,384.

NHTSA estimates the hourly cost associated with preparing VSSAs to be \$117.66¹ per hour using the Bureau of Labor Statistics' mean hourly wage estimate for architectural and engineering managers in the motor vehicle manufacturing industry (Standard Occupational Classification # 11-9041). Therefore, the estimated annual burden to each respondent is \$70,596 (600 hours × \$117.66). Therefore, the annual estimated labor costs to all respondents to this collection is \$282,384. This reflects a decrease of \$885,936 for labor costs annually.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as

¹ The hourly wage is estimated to be \$82.83 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2023, https://www.bls.gov/oes/current/naics4_336100.htm, last accessed October 9, 2024. The Bureau of Labor Statistics estimates that wages represent 70.2 percent of total compensation to private workers, on average. Therefore, NHTSA estimates the total hourly compensation cost to be \$117.66.

amended; 49 CFR 1.49; and DOT Order 1351.29A.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2024–24432 Filed 10–22–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Request for Payment of Federal Benefit by Check, EFT Waiver Form

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Request for Payment of Federal Benefit by Check, EFT Waiver Form.

DATES: Written comments should be received on or before December 23, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Request for Payment of Federal Benefit by Check, EFT Waiver Form.

OMB Number: 1530–0019.

Form Number: FS Form 1201W, FS Form 1201W–DFAS, FS Form 1201W (SP).

Abstract: 31 CFR part 208 requires that all Federal non-tax payments be made by electronic funds transfer (EFT). The forms are used to collect information from individuals requesting a waiver from the EFT requirement because of a mental impairment, living in a remote geographic location that does not support the use of EFT, or persons born on or before May 1, 1921. These individuals may continue to receive payment by check. However, 31 CFR part 208 requires individuals requesting one of these waiver conditions to submit a written justification that is notarized by a notary public. In order to assist individuals

with this submission, Treasury has prepared waiver forms in order to collect all necessary information.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3,250.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 1,083.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. 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; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 18, 2024.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2024–24548 Filed 10–22–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B)

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B).

DATES: Written comments should be received on or before December 23, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B).

OMB Number: 1530–0014.

Abstract: The information is collected so that Treasury can make the appropriate determinations as to the renewal of the Certificates of Authority of currently certified companies and the renewal of companies currently recognized by Treasury as Admitted Reinsurers. Included in the package is the Annual Letter to Executive Officers of Surety Companies Reporting to the Treasury (A) and the Annual Letter to Executive Officers of Companies Recognized by the Treasury as Admitted Reinsurers of Surety Companies Doing

Business with the United States Government (B). The Secretary of the Treasury has been given authority pursuant to 31 U.S.C. 9304–9308 to certify insurance companies wishing to write or reinsure federal surety bonds. The authority has been further codified at 31 CFR part 223.9 which specifies guidelines applicable to companies seeking certification while part 223.12 specifies requirements applicable to companies seeking recognition as an Admitted Reinsurer.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 341.

Estimated Time per Respondent: 18.75 hours.

Estimated Total Annual Burden Hours: 6,394.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. 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; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 18, 2024.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2024–24547 Filed 10–22–24; 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 Maryland Offshore Wind Project, Offshore of Maryland; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 240917–0242]

RIN 0648–BM32

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Maryland Offshore Wind Project, Offshore of Maryland

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 US Wind, Inc. (US Wind) during the construction of an offshore wind energy project (the Project) in Federal and State waters off of Maryland, 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–0490) (referred to as the Lease Area) and along associated export cable routes to sea-to-shore transition points (collectively, the project area), over the course of 5 years (January 1, 2025 through December 31, 2029). These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during specific 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 rule is effective from January 1, 2025, through December 31, 2029.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of US Wind's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://>

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This final rule, as promulgated, provides a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to authorize the take of marine mammals incidental to construction of the Project within the project area. NMFS received a request from US Wind to incidentally take a small number of marine mammals from 19 species of marine mammals, comprising 20 stocks (5 stocks by Level A harassment and Level B harassment; 15 stocks by Level B harassment only), incidental to US Wind's construction activities. US Wind did not request and NMFS neither anticipates nor allows take by serious injury or mortality incidental to the specified activities 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). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

As noted above, US Wind did not request and NMFS neither anticipates nor allows take by serious injury or mortality incidental to the specified activities in this final rulemaking. 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; 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; 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; 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 this rule containing 5-year regulations and associated LOA. This final rule also establishes required mitigation, monitoring, and reporting requirements for US Wind's construction activities.

Summary of Major Provisions Within the Final Rule

The major provisions within this final rule include:

- Allowing NMFS to authorize, under a LOA, the take of small numbers of marine mammals by Level A harassment and/or Level B harassment (50 CFR 217.312) incidental to the Project and prohibiting take of such species or stocks in any manner not permitted (50 CFR 217.313) (e.g., mortality or serious injury);
- Establishing a seasonal moratorium on foundation impact pile driving

during December 1–April 30, annually, as well as avoiding foundation impact pile driving in November to the maximum extent practicable to minimize impacts to North Atlantic right whales (*Eubalaena glacialis*);

- Conducting both visual and passive acoustic monitoring (PAM) by trained, NMFS-approved Protected Species Observers (PSO) and PAM operators before, during, and after select in-water construction activities;

- Requiring training for all Project personnel to ensure marine mammal protocols and procedures are clearly understood;

- Establishing clearance and shutdown zones for all in-water construction activities and high-resolution geophysical (HRG) marine site characterization surveys to prevent or reduce the risk of Level A harassment and to minimize the risk of Level B harassment, including a delay or shutdown of foundation impact pile driving if a North Atlantic right whale is observed at any distance by PSOs or acoustically detected within certain distances;

- Establishing minimum visibility and PAM monitoring zones during foundation impact pile driving;

- Requiring use of at least two sound attenuation devices during all foundation impact pile driving installation activities to reduce noise levels to those modeled assuming a broadband 10 decibel (dB) attenuation;

- Requiring sound field verification (SFV) monitoring during impact pile driving of foundation piles to measure *in situ* noise levels for comparison against the modeled results and ensure noise levels assuming 10 dB attenuation are not exceeded;

- Requiring SFV during the operational phase of the Project;

- Implementing soft-starts during impact pile driving and ramp-up during the use of HRG marine site characterization survey equipment;

- Requiring various vessel strike avoidance measures;

- Requiring various measures during fisheries monitoring surveys, such as removing gear from the water if marine mammals are considered at-risk or are interacting with gear;

- Requiring regular and situational reporting including, but not limited to, information regarding activities occurring, marine mammal observations and acoustic detections, and SFV monitoring results; and

- Requiring monitoring of the North Atlantic right whale sighting networks, Channel 16, and PAM data, as well as reporting any sightings to the NMFS.

Through adaptive management (*see* 50 CFR 217.347(c)(1)) NMFS Office of Protected Resources may modify (*e.g.*, remove, revise, or add to) the existing mitigation, monitoring, or reporting measures summarized above and required by the LOA.

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 216.106(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.” A “covered project” under FAST–41 is defined generally as “any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production” 42 U.S.C. 4370m–(6)(A). The Project, which involves construction of renewable wind energy infrastructure off of Maryland, will provide 300 megawatts (MW) of energy and, upon completion, advance the State of Maryland's renewable energy goals. As such, the Project falls under FAST–41's definition of “covered project.”

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).

The 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-project/fast-41-covered-projects/maryland-offshore-wind-project>.

Summary of Request

On August 31, 2022, US Wind submitted a request for the promulgation of regulations and

issuance of an associated 5-year LOA to take marine mammals incidental to construction activities associated with implementation of the Project offshore of Maryland in the BOEM Lease Area OCS–A 0490 and associated export cable routes. US Wind's request is for the incidental, but not intentional, taking of a small number of 19 marine mammal species (comprising 20 stocks) by Level B harassment (for all 20 stocks) and by Level A harassment (for 5 of the 20 stocks). US Wind did not request, and NMFS does not anticipate, take by serious injury or mortality to occur for any marine mammal species or stock incidental to the specified activities.

In response to our questions and comments and following extensive information exchanges between US Wind and NMFS, US Wind submitted a final, revised application on March 31, 2023 that NMFS deemed adequate and complete on April 3, 2023. This application is available on NMFS' website at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-wind-inc-construction-and-operation-maryland-offshore-wind>.

On May 2, 2023, NMFS published a notice of receipt (NOR) of US Wind's adequate and complete application in the **Federal Register** (88 FR 27463), requesting comments and soliciting information related to US Wind's request during a 30-day public comment period. During the NOR public comment period, NMFS received comment letters from 77 private citizens, 6 non-governmental organizations, and 1 State government organization (Delaware Department of Natural Resources and Environmental Control). NMFS reviewed all submitted material and took these into consideration during the drafting of the proposed rule.

On September 6, 2023 and September 11, 2023, US Wind submitted supplemental information related to its pilot whale and seal take analyses. The corresponding memos, entitled “US Wind NMFS Request for Information (RFI) Response Memo and Maryland Offshore Wind Project Revised Requested Take Tables” are available on our website at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-wind-inc-construction-and-operation-maryland-offshore-wind>.

On January 4, 2024, NMFS published the proposed rule for the Project in the **Federal Register** (89 FR 504). In the proposed rule, NMFS synthesized all of the information provided by US Wind, all best available scientific information and literature relevant to the 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 30 days from January 4, 2024 through February 5, 2024 on <https://Regulations.gov>. A summary of public comments received during this 30-day period are described in the Comments and Responses section; full public comments may be viewed on <https://Regulations.gov>.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations (87 FR 46921) 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 this incidental take authorization (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization,

authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and when notice is published on the effective date, NMFS would also notify US 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 Specified Activity

Overview

US Wind plans to construct and operate a wind energy facility, the Project, in the Atlantic Ocean in lease area OCS-A 0490, offshore Maryland. The Project consists of 3 construction campaigns including MarWin, located in the southeastern portion of the Lease Area with the potential to generate approximately 300 megawatts (MW) of energy, Momentum Wind, located immediately west of MarWin with the potential to generate approximately 808 MW of energy, and Future Development, which encompasses

buildout of the remainder of the Lease Area and for which generation capacity has yet to be determined (table 1). Once operational, MarWin and Momentum Wind would advance the State of Maryland's renewable energy goals, providing 50 percent of the State's goal by the year 2030, with the full buildout of the Lease Area further achieving renewable energy targets. US Wind also anticipates completing the Future Development campaign within the effective period of the rule.

The Project will consist of several different types of permanent offshore infrastructure, including up to 114 WTGs (e.g., 18-MW model with a 250-meter (m) rotor diameter platform), four OSSs, a MET tower, and inter-array and export cables. MarWin will occupy approximately 46.6 square kilometers (km²) (11,515 acres), which will include approximately 21 WTGs and 1 OSS. The MarWin campaign, as well as subsequent Momentum Wind and Future Development, includes monopiles as the only potential WTG foundation type. For each campaign, the OSS would be supported by monopiles or jacket foundations with skirt piles. Skirt piles are post-piled pin piles. Jacket foundations are placed on the seabed and pin piles are driven into jacket pile guides, which are known as skirts. Table 1 provides a summary of each construction campaign.

TABLE 1—US WIND'S ANTICIPATED CONSTRUCTION CAMPAIGN SCHEDULE

Campaigns	Construction year	Number of 11-m monopiles for WTGs	Number 3-m pin piles for OSS jacket foundations ¹	Number of 1.8-m pin piles for Met tower	Onshore export cables	Offshore substations
MarWin	1 (2025)	21	4 (1 jacket)	0	4	1
Momentum	2 (2026)	55	8 (2 jackets)	3	0	2
Future Development	3 (2027)	38	4 (1 jacket)	0	0	1

¹ Potential OSS foundations could also include monopile and suction bucket jacket foundations.

Strings of WTGs will connect with the OSS via a submarine inter-array cable transmission system. Up to four high-voltage alternating current (HVAC) offshore export cables will be installed during the MarWin campaign, spanning approximately 65–97 (kilometers) km (40–60 miles (mi)) in length, dependent on the location of the OSS and the final routing. The Export Cable Corridor (ECC) will transmit electricity from the OSS to one or two landfall sites in Delaware Seashore State Park.

The second construction campaign, Momentum Wind, will contain approximately 55 WTGs, 2 OSSs, and 1 MET tower within an area of approximately 142.4 km² (35,188 acres). The Met tower will be supported by pin pile foundations. During the third

construction campaign, Future Development, approximately 38 WTGs and 1 OSS will be installed within an area of approximately 80.3 km² (19,843 acres).

US Wind plans to install all monopile or pin pile foundations via impact pile driving. If suction bucket foundations are selected for OSS jacket foundations, impact pile driving would not be necessary. US Wind will also conduct the following supporting activities: temporarily install and subsequently remove gravity cells to connect the offshore export cables to onshore facilities; permanently install scour protection around all foundations; permanently install and perform trenching, laying, and burial activities associated with the export cables from

the OSSs to shore-based switching and sub-stations and WTG inter-array cables; and, during years 2 and 3, perform HRG surveys using active acoustic sources with frequencies of less than 180 kilohertz (kHz). To transport crew, supplies, and materials to support construction activities, vessels will transit within the Lease Area, along cable corridors, and between the project area and anticipated ports (Port Norris, NJ; Lewes, DE; Ocean City, MD; Baltimore, MD; Hampton Roads, VA; and Cape Charles, VA).

Up to four offshore export cables will be located among up to two corridors from the OSSs and connect to the planned landfall at either 3R's Beach or Tower Road within Delaware Seashore State Park. When the cables reach the

landfall site, they will be pulled into a cable duct generated by horizontal directional drilling (HDD), which will route the cables under the existing beach to subterranean transition vaults. All offshore cables will be connected to onshore export cables at the sea-to-shore transition point via trenchless installation (*i.e.*, underground tunneling utilizing micro tunnel boring installation methodologies).

Fishery monitoring surveys, performed via recreational boat-based surveys and a pot-based monitoring approach using ropeless gear technology, will be conducted in conjunction with the University of Maryland Center for Environmental Science (UMCES) to enhance existing data for specific benthic and pelagic species of concern.

Dates and Duration

As described above, US Wind will conduct 3 campaigns over 3 years: MarWin, Momentum Wind, and Future Development (table 1). Based on US Wind's planned schedule, the installation of all permanent structures will be completed by the end of November 2027. More specifically, US Wind will install piles only between May 1 and November 30. Also, the installation of WTG foundations and OSS 3-m pin pile jacket foundations will occur during daylight hours between May 1 and November 30 of 2025, 2026, and 2027 (table 2); however, NMFS would allow nighttime pile driving if US Wind submits, and NMFS approves, an Alternative Monitoring Plan, as discussed below. The single

Met tower foundation will be installed in 2026 (table 2). US Wind anticipates HRG surveys using sparkers and boomers to occur during 2026 and 2027. Up to 14 days of HRG survey activity are planned from April through June 2026 during the Momentum campaign. In addition, up to 14 days of HRG survey activity are planned from April through June 2027 during the Future Development campaign. Currently, US Wind is not planning to conduct activities that have the potential to result in take in 2028 and 2029. However, while table 2 represents US Wind's current schedule, NMFS recognizes the potential for activity schedules to shift such that they could occur during different timeframes within the five year effective period of this rule.

TABLE 2—US WIND'S ANTICIPATED CONSTRUCTION AND OPERATIONS SCHEDULE DURING THE EFFECTIVE PERIOD OF THE LOA¹

Project activity	Construction campaign	Expected timing ²	Expected duration (approximate)
Scour Protection Pre-Installation	MarWin	Year 1: Q2 through Q3 of 2025	21 days.
	Momentum Wind	Year 2: Q2 through Q3 of 2026	55 days.
	Future Development	Year 3: Q2 through Q3 of 2027	38 days.
WTG Foundation Installation ^{3,5}	MarWin	Year 1: June through September of 2025 ..	21 days.
	Momentum Wind	Year 2: May through August of 2026	55 days.
	Future Development	Year 3: June through August of 2027	38 days.
Scour protection post-installation	MarWin	Year 1: Q2 through Q3 of 2025	42 days.
	Momentum Wind	Year 2: Q2 through Q3 of 2026	110 days.
	Future Development	Year 3: Q2 through Q3 of 2027	76 days.
OSS Foundation installation ^{3,5}	MarWin	Year 1: July of 2025	1 day.
	Momentum Wind	Year 2: July of 2026	2 days.
	Future Development	Year 3: July of 2027	1 day.
Met Tower installation ^{3,4}	Momentum Wind	Year 2: June of 2026	1 day.
HRG surveys ⁵	Momentum Wind	Year 2: Q2 through Q3 of 2026	14 days.
	Future Development	Year 3: Q2 through Q3 of 2027	14 days.
Site preparation	n/a	Not anticipated	n/a.
Inter-array cable installation	MarWin	Year 1: Q2 through Q4 of 2025	42 days.
	Momentum Wind	Year 2: Q2 through Q4 of 2026	110 days.
	Future Development	Year 3: Q2 through Q4 of 2027	76 days.
Export cable installation	MarWin	Year 1: Q1 through Q4 of 2025	60 days.
	Momentum Wind	Year 2: Q1 through Q4 of 2026	120 days (2 cables).
	Future Development	Year 3: Q1 through Q4 of 2027	60 days.
Fishery monitoring surveys	MarWin	Q1 through Q4 Years 1–5	16 days/year for commercial pot surveys.
	Momentum Wind		12 days/year for recreational surveys.
	Future Development		

¹ Currently, US Wind is not planning to conduct activities that have the potential to result in take in 2028 and 2029. However, while table 2 represents US Wind's current schedule, NMFS recognizes the potential for activity schedules to shift such that they could occur during different timeframes within the five year effective period of this rule.

² Installation timing will depend on vessel availability, contractor selection, weather, and more. Year 1 is anticipated to be 2025, year 2 to be 2026, and year 3 to be 2027, although these are subject to change per the factors identified. *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.

³ The months identified here represent US Wind's planned schedule; however, in case of unanticipated delays, foundation installation may occur between May 1 and November 30 annually.

⁴ US Wind anticipates that all WTGs, OSS, and Met tower foundations will be installed by November 30, 2027; however, unanticipated delays may require some foundation pile driving to occur in years 4 (2028) or 5 (2029).

⁵ Represents HRG surveys that may result in take of marine mammals. US Wind plans to conduct HRG surveys that are not expected to result in take of marine mammals during Q2 through Q3 of year 1 given those surveys would utilize equipment all operating over 180kHz or have no acoustic output.

Specified Geographic Region

A detailed description of the Specific Geographic Region, identified as the Mid-Atlantic Bight, is provided in the proposed rule (89 FR 504, January 4, 2024). Since the proposed rule was published, no changes have been made

to the Specified Geographic Region. Generally, US Wind's specified activities (*i.e.*, impact pile driving of monopile and jacket foundations; placement of scour protection; trenching, laying, and burial activities associated with the installation of the ECRs and inter-array cables; HRG site

characterization surveys; and WTG operation) are concentrated in the Lease Area and ECRs offshore of Maryland. However, vessel transit from ports as far south as Virginia and as far north as New Jersey are anticipated.

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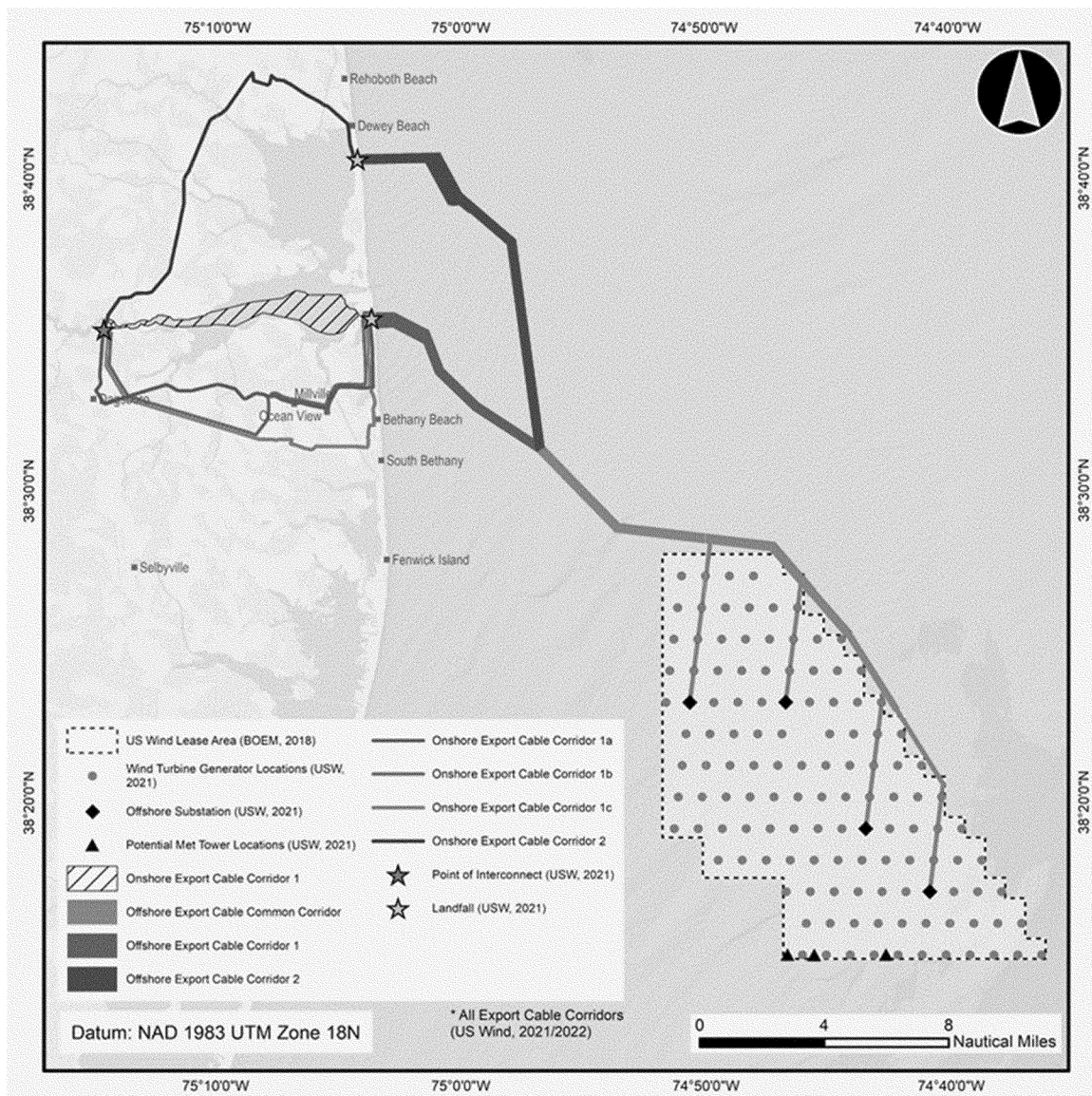


Figure 1 – The Maryland Offshore Wind Project Area

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Comments and Responses

NMFS published a proposed rule in the **Federal Register** on January 4, 2024 (89 FR 504) for a 30-day public comment period. The proposed rule described, in detail, US Wind's specified activities, the specific geographic region of the specified activities, the marine mammal species that may be affected by those activities, and the anticipated effects on marine mammals. In the proposed rule, we requested that interested persons submit relevant information, suggestions, and comments on US Wind's request for the promulgation of regulations and issuance of an associated LOA described therein, our estimated take analyses, the preliminary determinations, and the proposed regulations.

NMFS received 114 comment submissions, including from the Marine Mammal Commission (Commission), Delaware Department of Natural Resources (DDNC), Town of Fenwick Island, several non-governmental organizations, and individual citizens, all of which are available for review on www.regulations.gov. Most of these comments were out-of-scope or not applicable to the Project (*e.g.*, general opposition to or support of offshore wind projects; concerns for other species outside NMFS' jurisdiction (*e.g.*, birds and horseshoe crabs) methods for conducting site condition identification, support for the proposed rule and the Project, concern for energy distribution and power from the Project, beach erosion and flooding, critique of the Maryland offshore wind congressional

hearing held in January 2024), and are not described herein or discussed further. Non-governmental organizations included: Caesar Rodney Institute (CRI), Town of Fenwick Island (TFI), Wrecker Sportfishing, Deep Sea Defenders, and Tower Shore Beach Association. We have responded to all comments that contained substantive information and considered that information in this final rule, including comments related to the estimated take analysis, final determinations, and final mitigation, monitoring, and reporting requirements. A summary of comments is described below, along with NMFS' responses.

Modeling and Take Estimates

Comment 1: The Commission notes that, based upon SFV reports,

discrepancies exist between modeled and measured Level A harassment and Level B harassment zones. The Commission indicates that these discrepancies may be related to actual installation conditions and should be accounted for in the estimation of harassment zones, authorized number of takes, and mitigation, monitoring, and reporting requirements for the Maryland Wind Offshore Wind Project. The Commission recommends that NMFS provide the interim and/or final SFV reports for South Fork and Vineyard Wind 1 and allow for another 30-day public comment period for the Maryland Wind proposed rule before issuing a final rule.

Response: Based on the discussion below and given our consideration of the best available scientific information, including available sound field verification (SFV) reports from other offshore wind construction projects in the United States, we disagree with the suggestions made by the Commission. The Commission has expressed concerns about the lack of validation of source models in previous Commission letters. Since the proposed rule was published, NMFS has received interim/final sound field verification reports from the South Fork Wind project. In all but one case, the measured distances to NMFS' Level B harassment threshold were lower than the model predicted. The distance to NMFS' Level B harassment threshold for the South Fork project was modeled as 4.68 kilometers (km) while in-situ measurements identified distances ranging from 1.84 km to 3.25 km. MAI's modeling predicts the distances to the Level B harassment threshold during installation of the Maryland Wind 11-m monopiles will be approximately 5.25 km which is less than 1 km larger than South Fork's modeled distance. We note that South Fork determined that 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.

Since the public comment period ended on the proposed rule, NMFS has also received SFV reports from Vineyard Wind 1. However, due to the hammer energy assumption in the model versus what was used in the field (*i.e.*, more hammer energy was used than modeled) and other operational challenges, it is more challenging to compare the VW measured results directly to the modeled results, although the modeled distances to the Level A harassment threshold were larger (the largest modeled distance to the Level A

harassment threshold was for low-frequency cetaceans at 3.191 km) than distances to the Level A harassment threshold measured by SFV. The final SFV report for the 2023 construction of the Vineyard Wind 1 Offshore Wind Project is currently posted on our website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-llc-construction-vineyard-wind-offshore-wind>).

Importantly, in this final rule, should SFV results reveal noise levels are louder than those predicted assuming 10 dB attenuation, NMFS is requiring US Wind to implement additional measures to reduce sound levels such that they do not exceed those modeled assuming 10 dB. US Wind is required to conduct either thorough or abbreviated monitoring on all foundation piles installed.

NMFS has incorporated the best available scientific information into this final rule, using recent measurements as well as estimates obtained through modeling. In regards to the Commission's comment recommending another 30-day comment period for the proposed rule, NMFS disagrees with this recommendation and has determined that one 30-day comment period for the proposed rule is sufficient under the MMPA. The MMPA requires notice and opportunity for public comment. The 30-day public comment period for the Maryland Offshore Wind Project proposed rule was open to the public from January 4, 2024 through February 5, 2024. NMFS fulfilled the requirements of the MMPA by providing notice in the **Federal Register** and opportunity for public comment on this proposed rule.

Comment 2: The Caesar Rodney Institute (CRI) notes that NMFS has not established a standard version of estimated population abundances that should be used when evaluating ITA requests. CRI indicates that North Atlantic right whale best population abundance estimates vary between projects, ranging from 338 North Atlantic right whales (for the proposed Maryland Wind Offshore Wind Project proposed rule (89 FR 504, January 4, 2024)) to 346 and 394 North Atlantic right whales (for other projects). The CRI recommends that NMFS establish a North Atlantic right whale population abundance to be used in all applications, as well as a maximum allowed estimated population density for the months for which construction would take place.

Response: The MMPA and its implementing regulations require that incidental take regulations be

established based on the best available information. The dynamic nature of population science dictates that rulemakings will not be using the same population numbers from year to year. 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. Since publication of the proposed rule, NMFS has released the draft 2023 Stock Assessment Report indicating the North Atlantic right whale population abundance is estimated as 340 individuals based on sighting data through December 31, 2021 (88 FR 5495, January 29, 2024). NMFS has used the most recent best available scientific information in the analysis of this final rule. This new estimate, which is based on the analysis from Pace *et al.* (2017) and subsequent refinements found in Pace (2021), provides the best available, and in this case most recent, estimate, including improvements to NMFS' right whale abundance model. NMFS notes this estimate aligns with the 2022 North Atlantic right whale Report Card (Pettis *et al.*, 2022) estimate (also 340) based on sighting data through August 2022 but, as described above, that the SARs are peer reviewed by other scientific review groups prior to being finalized and published and that the Report Card does not undertake this process. Based on this, NMFS has considered all relevant information regarding North Atlantic right whales, including the information cited by the commenters. However, NMFS has relied on the draft 2023 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 US Wind's construction activities.

While NMFS does not 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.

Mitigation

Comment 3: Multiple commenters recommend strengthening mitigation measures for endangered species to minimize take by Level A harassment, specifically indicating that shutdown zones required by the proposed rule for fin and sei whales should be expanded to encompass the distance to the Level A harassment thresholds. One commenter stated that, legally, no take of endangered species by Level A harassment should be allowed.

Response: NMFS agrees with the commenters that take of endangered species, such as fin and sei whales, by Level A harassment should be minimized. As such, the shutdown zones for fin and sei whales encompass the modeled maximum $R_{0.5\text{percent}}$ distance to the Level A harassment threshold from the pile driving location, as described in the Mitigation section of this final rule. NMFS disagrees that additional or modified mitigation measures are necessary to affect the least practicable adverse impact on marine mammal species or stocks, including those listed under the ESA. This rule allows a limited number of Level A harassment takes to be authorized for two ESA-listed species (fin whale and sei whale) incidental to foundation impact pile driving (table 6). We note these take estimates did not consider mitigation measures other than seasonal restrictions and 10 dB of sound attenuation. Some mitigation measures in the proposed rule and this final rule are centered around North Atlantic right whales because of the species status and general fitness of individuals.

If clearance and shutdown zones were increased for fin and sei whales, it would likely further lengthen construction time frames, prolonging the time periods over which marine mammals may be exposed to construction-related stressors (as well as creating impracticable operational scenarios for the applicant). Southall et al. (2021) modeled multiple scenarios with different total construction season lengths and the results suggest that generally shorter construction periods are associated with lower risk, which aligns with the concept that more days of noise exposure and disturbance are associated with greater impacts. Accordingly, NMFS has determined that the current clearance and shutdown zones, together with other mitigation measures, affect the least practicable adverse impact on marine mammals. Lastly, regarding the comment that no Level A harassment of ESA-listed

species should be authorized—the MMPA mandates that NMFS shall authorize the take of marine mammals, provided the required findings are made. As required, NMFS has determined that the Level A and Level B harassment allowed under this rule will have a negligible impact on all marine mammal species and stocks and that the required measures affect the least practicable adverse impact on marine mammal species or stocks.

Comment 4: A commenter suggests that it should be clearly stated in the proposed rule that US Wind should be responsible for prompt veterinary care, rehabilitation, and/or handling of any mortally wounded marine mammals incidentally taken during the proposed activities.

Response: No serious injury or mortality is anticipated or authorized for US Wind's planned activities. In the event of sighting any injured marine mammals, US Wind would be required to follow reporting measures as described in the Reporting section and 217.345(f)(15)(iv), which include contacting the regional stranding hotline. Further, it would not be appropriate to require US Wind to be responsible for veterinary care, rehabilitation, and/or handling of any marine mammal injury or stranding cases.

The best available science indicates that the anticipated impacts from the specified activities potentially include avoidance, cessation of foraging or communication, TTS and PTS, stress, masking, etc. (as described in the *Effects of the Specified Activities on Marine Mammals and their Habitat* section in the proposed rule). NMFS emphasizes that there is no evidence that noise resulting from offshore wind development-related specified activities would cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing offshore wind activities. This point has been well supported by other agencies, including BOEM and the Marine Mammal Commission (Marine Mammal Commission Newsletter, Spring 2023). If the best available science indicates the takings allowed under these regulations may be having more than a negligible impact, NMFS must suspend or withdraw the LOA after notice and opportunity for public comment.

If a marine mammal appears to be injured or strands nearby during construction activities, the Marine Mammal Health and Stranding Response Program (MMHSRP), established by the MMPA, would be responsible for mobilizing a response, if

and where appropriate. This program coordinates emergency responses to sick, injured, distressed, or dead seals, sea lions, dolphins, porpoises, and whales. The MMHSRP works with volunteer stranding and entanglement networks as well as local, tribal, state, and federal government agencies to coordinate and conduct emergency responses to stranded or entangled marine mammals. The networks also respond, when safe and feasible, to document and recover carcasses. It does not and cannot respond to every stranded marine mammal, and it is not responsible for disposing of carcasses. The type of examination conducted varies and depends on availability of resources, location, carcass accessibility, and the decomposition state. A necropsy report, when written, includes data which are compiled over several weeks to months and then analyzed for a possible cause of death determination and findings. National and Regional summaries of stranding statistics are available at: <https://www.fisheries.noaa.gov/resource/publication-database/marine-mammal-health-and-stranding-response-program-reports>. Any strandings or marine mammals in need of care that occur in the vicinity of the Project Area during the specified activities would be the responsibility of the local stranding and/or entanglement network authorized by the MMHSRP.

Comment 5: The DNREC recommends extending the seasonal restriction on impact pile driving to November 1 through April 30, a time period reflecting highest activity levels of North Atlantic right whales, to reduce risk to North Atlantic right whales.

Response: NMFS has restricted foundation installation pile driving from December through April, a time period which represents the times of year when North Atlantic right whales are most likely to be in the project area. However, we recognize that the density of North Atlantic right whales begins to elevate in November, as shown by Roberts et al. (2023). US Wind's planned pile driving activity schedule does not include pile driving in November. However, a limited amount of pile driving in November may occur if the Project experiences significant delays. Should pile driving in November be necessary, US Wind has agreed to restrict pile driving to the maximum extent practicable. In any time of year when foundation installation is occurring, a visual sighting of a North Atlantic right whale by foundation installation PSOs or an acoustic detection within a 10 km PAM monitoring zone triggers a delay in pile driving commencement or shutdown. These mitigation measures

are designed to reduce takes of North Atlantic right whales to the maximum extent possible.

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 of 10 takes by Level B harassment of North Atlantic right whales incidental to any Project activities over the 5-year effective period of this rulemaking, the required mitigation will affect the least practicable adverse impact on the species from these activities. Specifically, the largest modeled Level B harassment zone size (5.25 km) is for impact pile driving of the 11-m monopiles, however the clearance and shutdown zone for North Atlantic right whales for impact pile driving is any distance. Any Level B harassment that is not avoided is not expected to impact important feeding or other behaviors that may occur in the Project Area in a manner that would pose 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. For these reasons, NMFS finds that expanded temporal restrictions are not warranted.

Comment 6: DNREC suggests that NMFS should require US Wind to maintain the 500-meter separation distance for North Atlantic right whales for all in-water construction activities, including activities for which take is not requested. The commenters further note that increased noise levels may increase stress in North Atlantic right whales, and the commenters, as well as the Caesar Rodney Institute, recommend that NMFS should not approve any offshore wind activities that may further impact North Atlantic right whales.

Response: NMFS disagrees with the commenter's suggestion for requiring a 500-m separation distance for North Atlantic right whales for all in-water construction activities. The required vessel separation distance from North Atlantic right whales during vessel transit and HRG surveys is 500 m, and the North Atlantic right whale clearance and shutdown zones are "any distance" for impact pile driving activities, exceeding the Level B harassment zone of 5.25 km and further reducing the likelihood of harassment for North Atlantic right whales in the area. As noted by the commenter, NMFS will require US Wind to cease activities in response to any marine mammal on a path toward or that comes within 10 m

of in-water construction equipment involving heavy machinery other than pile driving (e.g., trenching, cable laying, etc.). These non-pile driving in-water construction operations are relatively low impact (take is not anticipated or authorized) and the goal of the 10 m separation distance is to prevent contact between marine mammals and heavy construction equipment, rather than to limit exposure to noise. NMFS has determined that an increase in the shutdown distance for these in-water construction operations involving heavy equipment and not anticipated to result in incidental take is not necessary to affect the least practicable adverse impact.

The commenters' recommendation for NMFS to not approve offshore wind activities that may impact North Atlantic right whales is outside the scope of this final rule as NMFS does not approve offshore wind activities; NMFS only authorizes take of marine mammals incidental to these activities. NMFS is required to authorize the requested incidental take if it finds the total incidental take of small numbers of marine mammals by U.S. citizens "while engaging in that (specified) activity" within a specified geographical region during the 5-year period (or less) will have a negligible impact on such species or stock and, where applicable, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)). As described in the proposed rule and this final rule, NMFS has included requirements for mitigation measures that effect the least practicable adverse impact on all marine mammal species or stocks, including North Atlantic right whales, and their habitat, as required under the MMPA (16 U.S.C. 1371(a)(5)(A)(i)(II)).

Comment 7: Commenters note that there is a higher potential of vessel strikes as whales may respond to noise harassment by leaving or avoiding the Lease Area and moving into high traffic shipping lanes. The commenters further note that avoidance of the Project Area may increase stress and confusion for whales, resulting in an increased potential for vessel strikes and entanglement.

Response: NMFS disagrees that there is necessarily a higher potential for vessel strikes specifically due to whales leaving the area to avoid noise from project activities. NMFS analyzed the potential for vessel strike in the proposed rule. While acknowledging that whales may temporarily avoid the area where the specified activities occur and that elevated stress levels is a potential response to noise exposure,

NMFS does not anticipate, based on the best available science, that whales will abandon their habitat, be displaced in a manner that would specifically result in a higher risk of vessel strike, or become confused in a manner that would specifically result in a higher risk of vessel strike. The commenter does not provide evidence and no evidence identified by NMFS has found that this would be a reasonably anticipated outcome of the specified activity. The primary activity that is anticipated to result in temporary avoidance of the otherwise used habitat is foundation installation impact pile driving. Further, not only would this activity be limited to times of year when North Atlantic right whale presence is low, pile driving would be intermittent, and pile driving would only occur for a limited time over the course of three years, with PSOs monitoring both visual and acoustic cues. Any sighting of a North Atlantic right whale within any distance from pile driving activities would immediately halt such activity until the North Atlantic right whale left the area of their own volition.

Comment 8: DNREC indicates proper site condition identification should be conducted to minimize the need for US Wind to waive the shutdown requirement for pile refusal or pile instability purposes. DNREC further notes that HRG micro-siting surveys should be used to identify any seabed debris, unexploded ordnances, or other substrate conditions that could negatively impact pile driving operations.

Response: The need to waive the shutdown requirement due to pile refusal is expected to be low. However, regardless, additional surveying to assess the likelihood of pile refusal in advance would not change the need to waive the shutdown if necessary for human safety or to avoid equipment damage. Regarding the detection of unexploded ordnance, US Wind plans to conduct HRG micro-siting surveys to identify potential UXOs for avoidance of Project activities. US Wind has provided the information necessary for NMFS to conduct its analysis and make the necessary determinations, and additional survey requirements are not warranted.

Monitoring, Reporting, and Adaptive Management

Comment 9: The Commission recommends that NMFS ensure that the mitigation, monitoring, and reporting requirements for the construction of wind energy facilities are sufficiently detailed from the start and specified in the proposed rule so that these measures

are available for public comment. The Commission indicates that by not requiring US Wind to include mitigation and monitoring plans for the specified activities as part of the proposed rule, NMFS is not able to assess whether US Wind would be able to successfully implement mitigation measures adequate to effect the least practicable adverse impact on marine mammal species and the transparency of the public review process is compromised. The Commission suggests that US Wind submit the SFV plan, foundation pile driving plan, and PAM plan to NMFS for approval in advance of promulgating the final rule, and NMFS should post these plans for public comment. In particular, the Commission indicates that NMFS include the number of platforms that would be required to monitor for marine mammals during foundation installation.

Response: Due to other concurrent permitting processes and acknowledging the need for flexibility and project-specific implementation, NMFS disagrees these plans must be submitted prior to promulgating the final rule. The purpose of the Plans is for the developer to provide details to NMFS on how they would satisfy the criteria identified in the rule. These criteria are available for public review and comment.

In regards to the Commission's recommendation to include a requirement for the number of monitoring platforms during foundation installation, NMFS has added a requirement to the final rule at § 217.345 Monitoring and Reporting Requirements for a minimum of 3 monitoring platforms during foundation installation. US Wind will be required to employ a minimum of 3 active PSOs monitoring from the foundation installation vessel as well as a minimum of 3 active PSOs monitoring from PSO vessels. US Wind must employ at least two PSO vessels for monitoring during foundation installation.

Comment 10: A commenter recommends that the monitoring area should be expanded beyond the 125 square mile (80,000 acres) Maryland Wind Energy Area (MDWEA) to ensure that project activities can be halted in time for animals to pass through the area unharmed. The commenter further notes that the monitoring area should be expanded before any decisions are made.

Response: NMFS disagrees with the commenter that the planned monitoring area should be expanded beyond the boundaries of the MDWEA. As described in the proposed rule and this final rule, NMFS is requiring that US

Wind employ both visual and PAM methods for monitoring, as both approaches aid and complement each other (Van Parijs *et al.*, 2021). The use of PAM will augment visual detections for foundation pile driving, especially for activities with the largest zones, to expand observer coverage of the area. 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. In addition, NMFS is requiring US Wind to establish species-specific clearance and shutdown zones during impact pile driving and HRG surveys. The purpose of clearance and shutdown zones are to minimize and prevent potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of activity or halting the activity. NMFS has determined that the planned suite of mitigation and monitoring measures described in the proposed rule and this final rule are sufficient to effect the least practicable adverse impact on marine mammal species in the project area.

Effects Assessment

Comment 11: Multiple commenters note that the LOA should not be issued until the cumulative effects of all proposed projects are fully considered. Commenters further indicate that the MMPA rulemaking does not assess cumulative impacts on the affected marine mammal species, that the ITA does not align with NEPA, and that the NEPA process is incomplete. Commenters further indicate that the ITA should not be issued until the EIS is complete.

Response: NMFS is required to authorize the requested incidental take if it finds the total incidental take of small numbers of marine mammals by U.S. citizens "while engaging in that (specified) activity" within a specified geographical region will have a negligible impact on such species or stock and, where applicable, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)). Negligible impact is defined 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 effect on annual rates of recruitment or survival" (50 CFR 216.103). Consistent with the preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is used

in the negligible impact analysis. Here, 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 preamble of NMFS' implementing regulations also addresses cumulative effects from future, unrelated activities. Such effects are not considered in making the negligible impact determination under MMPA section 101(a)(5). NMFS considers: (1) cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis; and (2) reasonably foreseeable cumulative effects under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has reviewed BOEM's FEIS as part of its inter-agency coordination and determined that the analysis in the FEIS for the Maryland Wind Offshore Wind Project is sufficient to cover the scope of the marine mammal incidental take authorization described in this final rule.

This FEIS addresses cumulative impacts related to the Project and substantially similar activities in similar locations. Cumulative impacts regarding the promulgation of regulations and issuance of an LOA for activities planned by US Wind have been adequately addressed in the adopted EIS that supports NMFS' determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of the Project on ESA-listed species, including the North Atlantic right whale, were analyzed under section 7 of the ESA when NMFS engaged in formal inter-agency consultation with the NOAA Greater Atlantic Regional Field Office (GARFO) and initiated consultation on December 5, 2023. The Biological Opinion (BiOp) for the Project determined that NMFS' promulgation of regulations and issuance of an LOA for activities, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

The FEIS was finalized by BOEM on August 2, 2024 and adopted by NMFS on September 4, 2024, thus completing the NEPA process.

Comment 12: Multiple commenters recommend that NMFS consider the impacts of structure presence and operations, including those from operational noise on marine mammals as well as ocean mixing and vibrations on phytoplankton, zooplankton, and the food chain. A commenter noted that

analysis of incidental take during wind turbine operation is insufficient. Commenters indicate that NMFS should consider the impacts of operational noise on marine mammals since construction and operation will proceed simultaneously, and actual take from construction may be masked by any take related to operational noise.

Commenters further suggest the LOA should include a full analysis of impacts of operational noise and recommend that offshore wind energy projects be pushed back a minimum of 20 kilometers (km) from areas used by North Atlantic right whales for feeding and other life history activities.

Response: In the proposed rule, NMFS considered the impacts to marine mammals from operational noise and to their habitat, including prey, based on the best available science. In this final rule, NMFS has supplemented that analysis with new scientific information that has become available regarding these issues since publishing the proposed rule. This new information does not change our findings. The commenters did not provide scientific evidence that suggests the analysis within the proposed rule was unsupported. NMFS has fully evaluated the potential impacts of operational noise from issuing this final rule authorizing take of marine mammals over the five year effective period of this rulemaking and the potential impacts from long-term operations via the BiOp. We refer the reader to the Effects of the Specified Activities on Marine Mammals and Their Habitat section and the Negligible Impact Determination section in the proposed and this final rule for further details. In addition, US Wind will be required to use sound field verification (SFV) for measuring operational noise as wind turbines become operational to further evaluate the impacts of operational noise on marine mammals and their habitat.

In regards to moving the Project a minimum of 20 km away from North Atlantic right whale habitat, NMFS disagrees with this recommendation. As noted in the proposed rule, the Project Area overlaps with a North Atlantic right whale biologically important area (BIA) for migration but not with any feeding, breeding, or calving areas. The area over which North Atlantic right whales may be harassed is relatively small compared to the width of the migratory corridor. The width of the migratory corridor in this area is approximately 163.8 km while the width of the Lease Area, at the longest point, is approximately 33.1 km. North Atlantic right whales may be displaced from their normal path and preferred

habitat in the immediate activity area (primarily from pile driving activities), however, we do not anticipate displacement to be of high magnitude (e.g., beyond a few kilometers); thereby, any associated bio-energetic expenditure is anticipated to be small.

Comment 13: Several commenters claimed the request for an ITA should be denied alleging the specified activities kill as well as harm marine mammals and some commenters suggested that the ongoing whale UMEs, including the whale deaths occurring in the winter of 2022–2023, are linked with ongoing offshore wind activities. One commenter further claimed that although “the recent deaths and strandings of whales and other marine mammals along the eastern seaboard have not been proven to be the direct result of offshore wind activities, these activities have not been disproven as a contributing factor.”

Response: NMFS disagrees that the ITA should be denied, as we have made the necessary findings required by the MMPA for issuance and these findings are supported by the necessary analyses and best available science. Neither the proposed rule nor this final rule allow mortality or serious injury of marine mammals to be authorized. The best available science indicates that the anticipated impacts from the specified activities potentially include avoidance, cessation of foraging or communication, TTS and PTS, stress, masking, etc. (as described in the Effects of the Specified Activities on Marine Mammals and their Habitat section in the proposed rule). NMFS emphasizes that there is no evidence that noise resulting from offshore wind development-related specified activities would cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing offshore wind activities. The commenters offer no such evidence or other scientific information to substantiate their claim. This point has been well supported by other agencies, including BOEM and the Marine Mammal Commission (Marine Mammal Commission Newsletter, Spring 2023). Additionally, a recent paper by Thorne and Wiley (2024) reviewed spatiotemporal patterns of strandings, mortalities, and serious injuries of humpback whales along the US East Coast from 2016–2022. Humpback whales were chosen as a case study for this analysis as they are currently undergoing a UME and strand more often than other large whale species. Thorne and Wiley (2024) found vessel strikes to be a major driver in the increase of humpback whale strandings,

mortalities, and serious injury along the east coast. The potential for vessel strike increased during the study period due to increased vessel traffic in new foraging areas, the increased presence of juvenile humpback whales, and humpback whale foraging in shallow areas that overlap with vessel traffic. Based upon the spatiotemporal analysis, no evidence was found that offshore wind development played a role in the increased number of strandings over time. Future studies should focus on gaining a greater understanding of spatial and seasonal habitat use patterns of large whales, spatiotemporal changes in prey abundance and distribution, and how habitat use and foraging behavior affect the risk of vessel strike. While several species of delphinids and beaked whales have also stranded off New Jersey since 2011 (per data provided from the National Marine Stranding Network), there is no evidence that the acoustic sources used during HRG surveys contributed to these events. NMFS will continue to gather data to help us determine the cause of death for these stranded whales.

There are ongoing UMEs for humpback whales, North Atlantic right whales, and minke whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016 and 2017, respectively, and we provide further information on these UMEs in the species specific subsections in the Description of Marine Mammals in the Specific Geographic Region section of this final rule. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. Partial or full necropsy examinations were conducted on approximately half of the humpback whales that recently stranded along the U.S. east coast. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (e.g., national and state parks) with limited or no access. Of the humpback whales examined (roughly 90), about 40 percent had evidence of human interaction, either ship strike or entanglement. Based upon necropsies conducted thus far, the preliminary cause of mortality, serious injury, and morbidity in stranded North Atlantic right whales is entanglement or vessel strike. Full or partial necropsies have been conducted on approximately 60 percent of the stranded minke whales. Preliminary findings have shown evidence of human interaction or infectious disease. The best available science indicates that only a limited

amount of Level A harassment (PTS) or Level B harassment (disruption of behavioral patterns (e.g., avoidance)), may occur as a result of US Wind's specified activities. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned activities. More information about interactions between offshore wind energy projects and whales can be found at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales>.

Other

Comment 14: Multiple commenters note that more data are needed on the impact of wind turbine construction and operation on marine mammals, and that projects should be paused until these data are available. Commenters also recommend collecting sound level measurements on similar turbines, such as Vineyard Wind 1 Offshore Wind Farm, to inform the proposed rulemaking and LOA.

Response: The MMPA requires NMFS to evaluate the effects of the specified activities in consideration of the best scientific evidence available and to issue the requested incidental take authorization if it makes the necessary findings. The MMPA does not allow NMFS to delay issuance of the requested authorization on the presumption that new information or new regulations will become available in the future. If new information becomes available in the future, NMFS may modify the mitigation and monitoring measures in an LOA issued under these regulations through the adaptive management provisions, as described in § 217.347c(1) of this final rule. Furthermore, NMFS is required to withdraw or suspend an LOA if, after notice and public comment unless an emergency exists, it determines the authorized incidental take may be having more than a negligible impact on a species or stock. NMFS has duly considered the best scientific evidence available in its issuance of the final rule and made the required findings to issue this rule.

NMFS also notes that, as proposed, this final rule requires that no unmitigated piles can be installed and that SFV is required for piles to ensure that measured sound levels do not exceed those modeled assuming 10 dB of attenuation. NMFS acknowledges the importance of transparency in the reporting process and plans to make all final annual SFV reports available on our website. As mentioned above, since

the publication of the proposed rule NMFS has received SFV reports from Vineyard Wind 1 that, although challenging, allow for comparison between modeled and measured distances to the Level A harassment and Level B harassment thresholds. These results are available on our website at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-llc-construction-vineyard-wind-offshore-wind>.

Comment 15: A commenter states that NMFS' review of the ITA application was incomplete and the ITA should be denied. Another commenter further states that approval of the ITA would be a "dereliction of duty" and does not align with NOAA's mission.

Response: NMFS disagrees with the commenter that the ITA should be denied. NOAA's stewardship mission includes our responsibility to uphold and implement the provisions of multiple federal statutes designed to protect environmental resources, including the MMPA. The MMPA allows for the incidental take of marine mammals provided the necessary findings are made. As described in this **Federal Register** notice, NMFS has conducted the necessary analysis to support our negligible impact finding. In addition, we have required mitigation to ensure the least practicable adverse impact on marine mammals and their habitat. We have also included monitoring and reporting requirements to monitor compliance and impacts to marine mammals.

Changes From the Proposed to Final Rule

Since the publication of the proposed rule in the **Federal Register** on January 4, 2024 (89 FR 504), 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. In addition, reporting requirements on marine mammals have been updated in accordance with Greater Atlantic Regional Fisheries Office (GARFO), Southeast Regional Office (SERO), and the Northeast Fisheries Science Center (NEFSC) most recent guidance.

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' draft 2023 Stock Assessment Report (SAR) (89 FR 5495, January 29, 2024), we have updated the population estimate for the North Atlantic right whale (*Eubalaena glacialis*) from 368 to 340 and the total mortality/serious injury (M/SI) amount from 8.1 to 27.2. This increase is due to the inclusion of undetected M/SI (whereas 8.1 accounted only for detected M/SI). As described in the draft 2023 SARs (89 FR 5495, January 29, 2024), the use of the refined methods of Pace *et al.* (2021), the estimated annual rate of total mortality of adults and juveniles for the period 2016–2020 was 27.2, which is 3.4 times larger than the 8.1 total derived from reported mortality and serious injury for the same period.

Given the availability of new information, we have made updates to the UME summaries for North Atlantic right whales, humpback whales, and minke whales.

The following change is reflected in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the preamble to this final rule:

We have added information relating to the broken blade at the Vineyard Wind 1 Lease Area, the rarity of this event occurring, and that no take was requested, anticipated, proposed, or authorized incidental to blade failure so this is not discussed further in this document.

The following changes are reflected in the Estimated Take, Mitigation, and Monitoring and Reporting sections of the preamble to this final rule:

This final rule requires US Wind to employ a minimum of three monitoring platforms, including the pile driving vessel platform and a minimum of two PSO support vessels. Each platform must employ a minimum of three active on-duty PSOs.

We have also added a requirement for US Wind to cease pile driving activities if there is a live cetacean stranding within 50 km of pile driving activities and the NMFS Marine Mammal Stranding Network is attempting to herd or return animals to the water.

The requirement for PAM operators to receive conditional or unconditional approval was removed as the PAM operators' experience is relevant to all PAM operators and the conditional/unconditional approval framework does not apply.

The educational requirement for PSOs and PAM operators to have received a bachelor's degree from "an accredited college or university" has been removed. PSOs and PAM operators are still required to have received a bachelor's degree, although experience can still be substituted for education.

The requirement for submission of PAM detection data to the NEFSC has been updated due to a change in NEFSC reporting requirements. US Wind must submit full PAM detection data within 90 days after pile driving is complete and every 90-calendar days for transit lane PAM.

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.

We have removed duplicative measures and, for clarity and consistency, we revised paragraph § 217.340(b) of the regulatory text to fully describe the specified geographical region.

We have modified a proposed measure that set hammer energy guidelines during foundation and MET Tower installation to allow greater flexibility in response to the circumstances of the particular installation. We have retained the measures related to actions necessary should SFV identify that distances to NMFS harassment thresholds, regardless of hammer energies, are longer than anticipated.

For consistency, NMFS has included conditions in § 217.344(a) to clarify mitigation requirements discussed in the preamble. The conditions for commencing pile driving and HRG survey activities are clarified.

NMFS has added additional clarification on the authority of PSOs and PAM operators in § 217.344(a) to ensure compliance and proper implementation of the regulations.

NMFS has clarified language in § 217.344(b) to specify that this measure applies to vessels traveling in the specified geographical region and when Project vessels may deviate from vessel speed avoidance measures. NMFS has also defined the term "emergency" for clarity.

In § 217.344(b)(1), (11), and (12), § 217.344(c)(10), and (15), § 217.344(d)(2), § 217.345(a)(2), and (4), § 217.345(b)(2), (4), (8), and (9), NMFS has made minor changes to formatting and wording to more clearly state the requirements.

NMFS has added a requirement for all vessel operators to reduce speed to 10

knots (kn) or less when any large whale (other than a North Atlantic right whale, for which the requirement was already included) or large assemblages of cetaceans are observed within 500 m (0.31 mi) of a transiting vessel in § 217.344(b).

To align with the BiOp, NMFS has modified thorough SFV requirements (§ 217.344) and added a requirement for US Wind to conduct abbreviated SFV monitoring during pile driving activities in § 217.344(c).

NMFS has updated the requirement for US Wind to conduct SFV measurements during turbine operations instead of upon the commencement of turbine operations in § 217.344(c)(16).

In § 217.345(a), NMFS has updated the requirements for PSO and PAM operator qualifications. The requirement for PAM operators to receive conditional or unconditional approval was removed because all PAM operators are subject to a list of qualifications presented in the proposed rule and do not need to obtain conditional or unconditional approval. In addition, the educational requirement for PSOs and PAM operators to receive their bachelor's degrees from an accredited college or university has been removed, although PSOs and PAM operators are still required to have received a bachelor's degree, although experience can still be substituted for education.

In § 217.345(b)(7), NMFS has added a requirement for visual observations of marine mammals by pile driving Project personnel to be reported to on-duty PSOs and vessel captains to increase situational awareness.

In response to comments and to improve detection capabilities, NMFS has added a requirement for a minimum of 3 PSOs to be on-duty on each observation platform during impact pile driving and that, in addition to PSOs on the pile driving vessel, PSOs must also be observing for marine mammals on two dedicated PSO vessels.

In § 217.345(f)(6), NMFS has updated the requirement for reporting PAM detection data due to a change in NEFSC reporting requirements. US Wind must submit full PAM detection data within 90 days after foundation installation ceases.

Description of Marine Mammals in the Area of Specified Activities

As noted in the Changes from the Proposed to Final Rule section, since publication of the proposed rule (89 FR 504, January 4, 2024), 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** (89 FR 504, January 4, 2024).

Thirty-eight marine mammal species under NMFS' jurisdiction have geographic ranges within the western North Atlantic OCS (Hayes *et al.*, 2023). Sections 3 and 4 of US Wind's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species (US Wind, 2023). 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 3 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 3 are the most recent available data at the time of publication which can be found in NMFS' 2023 draft SARs (89 FR 5495, January 29, 2024), available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

TABLE 3—MARINE MAMMAL SPECIES THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN, BY HARASSMENT

Common name ¹	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Balaenidae:</i> North Atlantic right whale	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	340 (0; 337; 2021) ⁵	0.7	⁵ 27.2
<i>Family Balaenopteridae</i> (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24, 5,573, 2021)	11	2.05
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02, 3098, 2021)	6.2	0.6
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	- , -, N	21,968 (0.31, 17,002, 2021) ..	170	9.4
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	- , -, Y	1,396 (0, 1,380, 2016)	22	12.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i>						
Killer whale ⁸	<i>Orcinus orca</i>	Western North Atlantic	- , -, N	UNK (UNK, UNK, 2016)	UNK	0
Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic	- , -, N	39,215 (0.3, 30,627, 2021)	306	5.7
Short-finned pilot whale ...	<i>Globicephala macrorhynchus</i>	Western North Atlantic	- , -, Y	18,726 (0.33, 14,292, 2021) ..	143	218
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic Off-shore.	- , -, N	64,587 (0.24, 52,801, 2021) ⁶ ..	507	28
Bottlenose dolphin	<i>Tursiops truncatus</i>	Northern Migratory Coastal	- , -, Y	6,639 (0.41, 4,759, 2016) ⁷	48	12.2–21.5
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	- , -, N	93,100 (0.56, 59,897, 2021) ..	1,452	414
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	- , -, N	31,506 (0.28, 25,042, 2021) ..	250	0
Pantropical spotted dolphin.	<i>Stenella attenuata</i>	Western North Atlantic	- , D, N	2,757 (0.50, 1,56, 2021)	19	0
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	- , -, N	44,067 (0.19, 30,662, 2021) ..	307	18
Rough-toothed dolphin ⁸ ...	<i>Steno bredanensis</i>	Western North Atlantic	- , -, N	unk (unk, unk, 2021)	undet	0
Striped dolphin ⁸	<i>Stenella coerulescens</i>	Western North Atlantic	- , -, N	48,274 (0.29, 38,040, 2021) ..	529	0
<i>Family Phocoenidae (porpoises):</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy ...	- , -, N	85,765 (0.53, 56,420, 2021) ..	649	145
Order Carnivora—Pinnipedia						
<i>Family Phocidae (earless seals):</i>						
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	- , -, N	61,336 (0.08, 57,637, 2018) ..	1,729	339
Gray seal ⁹	<i>Halichoerus grypus</i>	Western North Atlantic	- , -, N	27,911 (0.20, 23,624, 2021) ..	1,512	4,570
Harp seal	<i>Pagophilus groenlandicus</i>	Western North Atlantic	- , -, N	7.6M (UNK, 7.1M, 2019)	426,000	178,573

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2022)).

² ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR, or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike).

⁵ In the proposed rule (89 FR 504, January 4, 2023), 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=340) was released in NMFS' draft 2023 SARs and has been incorporated into this final rule. The current draft SAR includes an estimated population (N best 340) based on sighting history through December 2021 (89 FR 5495, January 29, 2024). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023); Total annual average observed North Atlantic right whale mortality during the period 2017–2021 was 7.1 animals and annual average observed fishery mortality was 4.6 animals. Numbers presented in this table (27.2 total mortality and 17.6 fishery mortality) are 2016–2020 estimated annual means, accounting for undetected mortality and serious injury.

⁶ As noted in the draft 2023 SAR (89 FR 5495, January 29, 2024), abundance estimates may include sightings of the coastal form.

⁷ There are two morphologically and genetically distinct forms of common bottlenose dolphin (Duffield *et al.*, 1983; Mead and Potter, 1995; Rosel *et al.*, 2009) described as the coastal and offshore forms in the western North Atlantic (Hersh and Duffield, 1990; Mead and Potter, 1995; Curry and Smith, 1997; Rosel *et al.*, 2009). The two morphotypes are genetically distinct based upon both mitochondrial and nuclear markers (Hoelzel *et al.*, 1998; Rosel *et al.*, 2009). The genetic and morphological differences recently led to the coastal form being described as a new species, *Tursiops erebennus* (Costa *et al.*, 2022; 89 FR 5495, January 29, 2024). Population estimates are based upon recent surveys in 2021.

⁸ US Wind did not request take of these species; however, their exposure analysis demonstrates there is potential for harassment. Although these species are rare in the project area, NMFS would authorize a small amount of Level B harassment in the case of potential presence during pile driving.

⁹ 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.

Of the marine mammal species and/or stocks with geographic ranges that include the western North Atlantic OCS (table 3–1 in US Wind incidental take authorization (ITA) application), 19 are not expected to be present or are considered rare or unexpected in the project area based on sighting and distribution data; they are, therefore, not discussed further beyond the

explanation provided here. Specifically, the following cetacean species are known to occur off of Maryland but are not expected to occur in the project area due to the location of preferred habitat outside the Lease Area and ECCs, based on the best available information, and therefore US Wind did not request, and NMFS is not authorizing take, of these species: Blue whale (*Balaenoptera*

musculus), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whales (*Mesoplodon densirostris*, *M. europaeus*, *M. mirus*, and *M. bidens*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Clymene dolphin (*Stenella clymene*), dwarf sperm whale (*Kogia sima*), false killer whale (*Pseudorca crassidens*), Fraser's dolphin

(*Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), northern bottlenose whale (*Hyperoodon ampullatus*), pygmy killer whale (*Feresa attenuata*), pygmy sperm whale (*Kogia breviceps*), sperm whale (*Physeter macrocephalus*), spinner dolphin (*Stenella longirostris*), and white-beaked dolphin (*Lagenorhynchus albirostris*). Two species of phocid pinnipeds are also uncommon in the project area, including: harp seals (*Pagophilus groenlandica*) and hooded seals (*Cystophora cristata*). However, harp seals are known to strand in coastal Maryland. Therefore, the LOA, if issued, would authorize take of harp seals.

In addition to the species listed in table 2, the Florida manatee (*Trichechus manatus*; a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Mid-Atlantic region during summer months (U.S. Fish and Wildlife Service (USFWS), 2019). However, as manatees are managed solely under the jurisdiction of the U.S. FWS and are considered rare or unexpected in the Project Area, they are not considered or discussed further in this document.

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 (89 FR 504, January 4, 2024). Other than adjustments to population statistics (e.g., North Atlantic right whale population abundance) and UME updates, we are not aware of any 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 (89 FR 504, January 4, 2024). 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 January 2024, NMFS released its draft 2023 SARs, (89 FR 5495, January 29, 2024) which updated the population estimate (N_{best}) of North Atlantic right whales to 340 individuals (an increase from the final 2022 SARs ($n=338$); the annual M/SI value dropped from the final 2022 SAR of 31.2 to 27.2 in the draft 2023 SAR. Beginning in the 2022 SARs, the M/SI for North Atlantic right

whale included the addition of estimated undetected mortality and serious injury, which had not been previously included in the SAR. The current population estimate is equal to the North Atlantic Right Whale Consortium's 2022 Annual Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.*, 2023).

As described in the proposed rule, 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 3, 2024, there have been 40 confirmed mortalities (dead, stranded, or floaters), 1 pending mortality, and 36 seriously injured free-swimming whales for a total of 77 whales. The UME also considers animals with sublethal injury or illness (called "morbidity"; $n=65$) bringing the total number of whales in the UME to 142. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-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 known cases. Since publication of the proposed rule, the number of animals considered part of the UME has increased to 227 total mortalities (as of September 3, 2024). More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2024-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 2022–2023 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 3, 2024, a total of 174 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. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-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 June 2022 and lasted through July 2022. The UME Investigative Team reviewed necropsy, histopathology, and diagnostic findings. They determined the UME was attributed to spillover events of the highly pathogenic avian influenza H5N1 virus from infected wild birds to harbor and gray seals. An ongoing HPAI H5N1 global outbreak in domestic and wild birds and wild mammals began in 2021. Live seals showed signs of respiratory and neurological disease including nasal and ocular discharge, coughing, unresponsiveness, and seizures. Eighteen percent of the stranded seals (33 out of 180) were tested for avian influenza via polymerase-chain-reaction. A subset of seals were positive for HPAI H5N1 with preliminary findings confirmed by the U.S. Department of Agriculture's National Veterinary Services Laboratories. Of the 33 seals tested during the UME period 19 (58 percent) were positive for H5N1 (17 harbor seals; 2 gray seals) and 14 (42 percent) tested negative. Twelve H5N1 positive seals had histopathology conducted; 11 of those seals had lesions (primarily respiratory and/or

neurologic) suspected or consistent with avian influenza infection. Sequencing of the H5N1 virus detected in seals suggests the seals were infected from spillover events from infected wild birds to these seals. While the UME was not occurring in the area of the Project, the populations affected by the UME were the same as those potentially affected by the Project. Information on this UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

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. 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 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, Kogia, river dolphins, <i>cephalorhynchid</i> , <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Exposure to underwater noise from the Project's specified activities have the potential to result in Level A harassment or Level B harassment of marine mammals in the specified geographic region, but no serious injury or mortality. The proposed rule (89 FR 504, January 4, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Project's specified activities on marine mammals and their habitat. While some new literature regarding marine mammal distribution and habitat use has been published since publication of the proposed rule (e.g., BOEM *et al.*, 2024; Holdman *et al.*, 2023; Pirotta *et al.*, 2024; Roberts *et al.*, 2024; Thorne and Wiley, 2024), there is no new information that NMFS is aware of that changes the analysis in the proposed rule. We provide a summary of these papers below.

The recently released BOEM and NOAA Fisheries North Atlantic Right Whale Strategy (BOEM *et al.*, 2024) identified actions related to mitigation and decision-support tools, research and

monitoring, and collaboration, communication, and outreach to minimize risk and impacts to North Atlantic right whales. The identified actions would also allow for coordinated and efficient collaborations between Federal agencies and partners, collection and application of the best available scientific data, and implementation of effective mitigation measures. The Strategy also describes potential actions for further development as well.

Pirotta *et al.* (2024) incorporated data and analysis of North Atlantic right whale length, compiled by the North Atlantic Right Whale Consortium, to investigate whether the smaller mean asymptotic length currently documented for North Atlantic right whales is associated with lower reproductive output. North Atlantic right whale mean asymptotic length (Stewart *et al.*, 2021) and female calving probability (Pirotta *et al.*, 2023) have been in decline for decades. Pirotta *et al.* (2024) expanded upon the conducted by Stewart *et al.* (2022) and quantified how length contributes to calving probability, while taking into account variation due to individual health of whales. The finding that smaller mean

asymptotic length contributes to lower calving probability for North Atlantic right whales provides a greater understanding into drivers for decreasing reproductive output for this species.

In 2022, the Duke University Marine Geospatial Ecology Laboratory provided updated habitat-based marine mammal density models for the U.S. Atlantic (Roberts *et al.*, 2016; Roberts *et al.*, 2023). The proposed rule incorporated these density models into methodology for estimating take from foundation installation and HRG surveys (89 FR 504, January 4, 2024). Recently, North Atlantic right whale density model results were evaluated using independently collected passive acoustic monitoring (PAM data) (Roberts *et al.*, 2024). Positive correlations between North Atlantic right whale densities and acoustic detection rates indicated concurrence between visual and acoustic observations of North Atlantic right whales. Results of this study also further quantify the North Atlantic right whale distribution shifts that occurred in 2010.

Moreover, new data also supports our inclusion of certain mitigation measures in the proposed and this final rule. For

example, Crowe *et al.* (2023) discussed the use and importance of real-time data for detecting North Atlantic right whales. The shift in North Atlantic right whale habitat use motivated the integration of additional ways to detect the presence of North Atlantic right whales and passive acoustic detections of right whale vocalizations reported in near real-time became an increasingly important tool to supplement visual sightings. The proposed rule did include real-time and daily awareness measures and sighting communication protocols, NMFS evaluated these measures and added details for clarity or updated the reporting mechanisms, such as in the case of sighting an injured North Atlantic right whale. Davis *et al.* (2023) analyzed North Atlantic right whale individual upcalls from 2 years of acoustic recordings in southern New England which showed that North Atlantic right whales were detected at least 1 day every week throughout both years, with highest North Atlantic right whale presence from October to April. Within southern New England (SNE), on average, 95 percent of the time North Atlantic right whales persisted for 10 days, and recurred again within 11 days. An evaluation of the time period over which it is most effective to monitor prior to commencing pile driving activities showed that with 1 hour of pre-construction monitoring there was only 4 percent likelihood of hearing a North Atlantic right whale, compared to 74 percent at 18 h. Therefore, monitoring for at least 24 hours prior to activity will increase the likelihood of detecting an up-calling North Atlantic right whale.

Thorne and Wiley (2024) recently reviewed spatiotemporal patterns of strandings, mortalities, and serious injuries of humpback whales along the U.S. east coast from 2016–2022 and found vessel strikes to be the major driver in the increase of humpback whale strandings, mortalities, and serious injury. Based upon the spatiotemporal analysis, no evidence was found that offshore wind development played a role in the increased number of strandings over time. In fact, the potential for vessel strike increased during the course of the study due to increased vessel traffic in new foraging areas, the increased presence of juvenile humpback whales, and humpback whale foraging in shallow areas that overlap with vessel traffic.

Similar to the discussion presented in the proposed rule, the BiOp stated it is likely the Project will produce a wind wake from operation of the turbines and that the foundations themselves will

lead to disruptions in local conditions. The scale of these effects is expected to range from hundreds of meters and up to 1 km from each foundation and the changes in conditions may alter the distribution of nutrients, primary production, and plankton (Floeter *et al.*, 2017; van Berkel *et al.*, 2020). However, the BiOp concluded it is not expected that the impacts to oceanic conditions resulting from the Project will be large enough to affect regional conditions that could influence the distribution of prey or conditions that aggregate prey in the broader Mid-Atlantic Bight region or within or around the Maryland Wind WDA in a way that would have adverse effects on ESA-listed species. Therefore, NMFS expects any alteration of the biomass of plankton in the region, and therefore, the total food supply, to be so small that adverse effects on ESA-listed species are extremely unlikely to occur.

Overall, there is no new scientific information regarding the general anticipated effects of OSW construction on marine mammals and their habitat that was not discussed in the proposed rule. The information and analysis regarding the potential effects on marine mammals and their habitat has not changed and is adopted here by reference (see 89 FR 504, January 4, 2024).

Globally, there are more than 341,000 operating WTGs (Global Wind Energy Council). Turbine failures are known to occur but are considered rare events (Katsaprakakis *et al.*, 2021, DOE, 2024a). For example, fewer than 40 incidents were identified in the modern fleet of more than 40,000 onshore turbines installed in the United States as of 2014 (DOE, 2024b). In 2022, the total global capacity of offshore wind reached 59,009 MW from 292 operating projects and over 11,900 operating wind turbines in 2022 (DOE, 2023), and a review of the relevant literature and media reports indicate blade failure among this cohort of turbines continues to be rare, consistent with industry performance in onshore wind turbines. On July 13, 2024, however, a blade on one of the WTGs at Vineyard Wind 1, a project located off of Martha's Vineyard and Nantucket, was damaged during the "warm up" phase of operations, causing a portion of the blade, primarily composed of fiberglass, to fall into the water. In cooperation with Vineyard Wind 1, GE Vernova, the blade manufacturer, initiated debris recovery efforts and an investigation. Following this blade failure incident, the Bureau of Safety and Environmental Enforcement (BSEE), Department of Interior, issued a Suspension Order on July 17, 2024 ([https://www.bsee.gov/newsroom/latest-](https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-statement-on-vineyard-wind)

[news/statements-and-releases/press-releases/bsee-statement-on-vineyard-wind](https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-statements-and-releases/press-releases/bsee-issues-new-order-to-vineyard-wind)) and an additional Order for clarification on July 26, 2024 (<https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-issues-new-order-to-vineyard-wind>), which suspends power production and any further wind turbine generator construction until the suspension is lifted.

As noted above, wind turbine failure is considered rare, and NMFS still considers the likelihood that blade failure would occur pursuant to US Wind's specified activity during the effective period of the ITA so low as to be discountable. Furthermore, GE Vernova's quality assurance program will complete thorough inspections on the remaining blades to be installed to ensure additional blade malfunction incidents do not occur. US Wind did not request, NMFS does not anticipate, and NMFS has not authorized, take of marine mammals incidental to a turbine blade failure and, therefore the topic is not discussed further.

Estimated Take

This section provides an estimate of the number of incidental takes that may be authorized through this rule, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination. The analysis related to take incidental to HRG surveys and foundation installation is unchanged since the proposed rule.

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 (as well as impulse metric (Pascal-second) and peak sound pressure level thresholds above which marine mammals may incur non-auditory injury from underwater explosive detonations); (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available. Below, we describe the factors considered here in more detail and present the 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 are likely 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 identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed. A summary of NMFS' 2018 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 state of the receiving animals (e.g., 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 (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 temporary threshold shift (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 (e.g., conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

US Wind's construction activities include the use of intermittent (e.g., impact pile driving and HRG acoustic sources) sources; therefore, the 160 dB re 1 μ Pa (RMS) threshold is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance, 2018) identifies dual criteria to assess auditory injury constituting 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 (*i.e.*, impulsive or non-impulsive sources). As dual metrics, NMFS considers onset of PTS constituting Level A harassment to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). The Project includes the use of impulsive and non-impulsive sources.

The 2018 thresholds are provided in table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 5—ONSET OF 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.
Otariid pinnipeds (OW) (Underwater)	Cell 9: $L_{p,0-pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	Cell 10: $L_{E,p,OW,24h}$: 219 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 μ Pa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Take That May Be Authorized

In the proposed rule, we discussed the marine mammal density and occurrence information, acoustic modeling, and take estimation methodologies and results for each of US Wind's specified activities and all marine mammal species and stocks. All of this information presented in the proposed rule, including multiple tables

(e.g., densities, acoustic ranges, source characteristics) remains accurate and unchanged and is not reproduced here. Below, tables 6 and 7 identify the maximum annual allowable take and the maximum total allowable take across the 5-year effective period of the rule.

As described in the proposed rule (89 FR 504, January 4, 2024), NMFS used

the best available science and robust models to consider the interaction of marine mammal movement, the environment, and the Project activities, in the context of NMFS' acoustic thresholds, to project the maximum number of takes that are reasonably expected to occur, by Level A harassment and Level B harassment. However, NMFS has also acknowledged

the uncertainty inherent in certain input values (*e.g.*, source levels and spectra) and environmental variability present in real-life physical and biological systems. The LOA would specify maximum annual and 5 year takes that may not be

exceeded, by Level A and Level B harassment, but would not specify the number of allowable takes by activity type, thus allowing for flexibility should the number of takes from a specific activity type exceed the number

modeled for the specific activity type, provided the manner and impacts of those takes remain within those considered within the analysis and the total takes remain below the annual maximum and 5-year totals.

TABLE 6—MAXIMUM LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKES FOR ALL ACTIVITIES THAT MAY BE AUTHORIZED DURING THE CONSTRUCTION OF THE PROJECT AND OVER THE COURSE OF THE FIVE YEARS COVERED BY THE RULE ¹

Marine mammal species	Total take by Level A harassment that may be authorized	Total take by Level B harassment that may be authorized
North Atlantic right whale ²	0	10
Fin whale ²	6	35
Humpback whale	6	30
Minke whale	9	58
Sei whale ²	3	3
Killer whale	0	9
Atlantic spotted dolphin	0	168
Coastal bottlenose dolphin	0	2,165
Offshore bottlenose dolphin	0	2,755
Bottlenose dolphin ³	0	258
Common dolphin	0	488
Long-finned pilot whale	0	48
Short-finned pilot whale	0	33
Pantropical spotted dolphin	0	15
Risso's dolphin	0	70
Rough-toothed dolphin	0	18
Striped dolphin	0	138
Harbor porpoise	6	68
Gray seal ⁴	0	496
Harbor seal ⁴		
Harp seal ⁴		

¹ The final rule and LOA would be effective from January 1, 2025 through December 31, 2029, however, US Wind has not planned activities to occur in 2028 or 2029. As described in table 2, NMFS recognizes the potential for activity schedules to shift such that they occur during different timeframes within the five year effective period of the rule, including the potential for activities to occur in 2028 and 2029.

² Listed as Endangered under the ESA.

³ The total take over 5 years represented here accounts for HRG surveys wherein the take may occur to either the Northern migratory coastal stock and/or the offshore stock of bottlenose dolphins.

⁴ Take that may be authorized includes harbor seals, gray seals, and harp seals.

To inform both the negligible impact analysis and the small numbers determination, NMFS also (in addition to the five-year total) assesses the maximum number of takes of marine mammals that could occur within any given year. For each species or stock, we consider the maximum number of Level A harassment takes that could occur and may be authorized in any one year, the maximum number of Level B harassment takes that could occur and may be authorized in any one year, and the sum of those two annual maxima to yield the highest number of total takes that could occur in any year (table 7). Table 7 also indicates the number of takes authorized relative to the abundance of each stock. The takes enumerated here represent daily instances of take, not necessarily individual marine mammals taken. One take represents a day in which an

animal was exposed to noise above the associated harassment threshold at least once. Some takes represent a brief exposure above a threshold, while in some cases takes could represent a longer, or repeated, exposure of one individual animal above a threshold within a 24-hour period. Whether or not every take assigned to a species represents a different individual depends on the daily and seasonal movement patterns of the species in the area. For example, activity areas with continuous activities (all or nearly every day) overlapping known feeding areas (where animals are known to remain for days or weeks on end) or areas where species with small home ranges live (*e.g.*, some pinnipeds) are more likely to result in repeated takes to some individuals. Alternatively, activities that are not occurring on consecutive days for the duration of the Project (*e.g.*,

foundation installation) or occurring in an area where animals are migratory and not expected to remain for multiple days, represent circumstances where repeat takes of the same individuals are less likely. For example, 100 takes could represent 100 individuals each taken on one day within the year, or it could represent 5 individuals each taken on 20 days within the year. The combination of number of individuals each taken and number of days on which take would occur would depend upon the activity, the presence of biologically important areas in the project area, and the movement patterns of the marine mammal species exposed. Where information to better contextualize the enumerated takes for a given species is available, it is discussed in the Negligible Impact Analysis and Determination and/or Small Numbers sections, as appropriate.

TABLE 7—MAXIMUM NUMBER OF TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT THAT MAY BE AUTHORIZED IN ANY ONE YEAR OF THE PROJECT RELATIVE TO STOCK POPULATION SIZE ¹

Marine mammal species	NMFS stock abundance	Maximum annual Level A harassment	Maximum annual Level B harassment	Maximum annual take	Maximum take (instances) as a percentage of stock abundance) ^{1 2}
North Atlantic right whale ^{3 4}	338	0	4	4	1.18
Fin whale ^{3 4}	6,802	2	18	20	0.29
Humpback whale ⁴	1,396	2	16	18	1.29
Minke whale	21,968	6	41	47	0.21
Sei whale ^{3 4}	6,292	1	1	2	0.03
Killer whale ⁴	UNK	0	3	3	UNK
Atlantic spotted dolphin ⁴	39,921	0	69	69	0.17
Coastal bottlenose dolphin ⁵	6,639	0	1,591	1,591	24.0
Offshore bottlenose dolphin ⁵	62,851	0	1,768	1,768	2.81
Common dolphin	172,974	0	298	298	0.17
Long-finned pilot whale ⁴	39,215	0	16	16	0.04
Short-finned pilot whale ⁴	28,924	0	11	11	0.04
Pantropical spotted dolphin ⁴	6,593	0	5	5	0.08
Risso's dolphin ⁴	35,215	0	26	26	0.07
Rough-toothed dolphin ⁴	136	0	6	6	4.41
Striped dolphin ⁴	67,036	0	46	46	0.07
Harbor porpoise ⁴	95,543	3	39	42	0.04
Gray seal ⁶	27,300	0	341	341	1.25
Harbor seal ⁶	61,336				0.56
Harp seal ⁶	7.6M				0.004

¹ Year 2 (2026) represents the most overall impactful year.

² The values in this column represent the assumption that each take that may be authorized would occur to a unique individual. Given the scope of planned work, this is highly unlikely for species common to the project area (*e.g.*, North Atlantic right whales, humpback whales) such that the actual percentage of the population taken is less than the percentages identified here.

³ Listed as Endangered under the ESA.

⁴ Take that may be authorized is based on average group size.

⁵ The amount of take identified includes the maximum amount of take that could occur from impact pile driving in any given year plus the maximum amount of take from HRG surveys in any given year, assuming all take from HRG surveys is allocated to both bottlenose dolphin stocks.

⁶ Assumes 100 percent of the take by Level B harassment is from either the gray seal stock, harbor seal stock, or harp seal stock.

Mitigation

As noted in the Changes from the Proposed to Final Rule section, NMFS has added new mitigation requirements and clarified a few others. These changes are described in detail in the sections below. Besides these changes, 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 ITAs to include information about the availability and feasibility (*e.g.*, 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 (*e.g.*, likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (*i.e.*, the probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (*i.e.*, the probability if implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider factors such 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 ITAs 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 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 (*i.e.*, seasonal and daily) and spatial work restrictions, real-time measures (*e.g.*, shutdown, clearance, and vessel strike avoidance), and noise attenuation/reduction measures. Temporal and spatial 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 activity types, and in the following subsections we describe the measures that apply specifically to foundation installation and HRG surveys. Details on specific requirements can be found in 50 CFR part 217, subpart II, set out at the end of this rule.

Training and Coordination

NMFS requires all US Wind employees and contractors conducting activities on the water, including but not limited to, all vessel captains and crew to be trained in marine mammal detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support US 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, US Wind is required to instruct all project personnel regarding the authority of the marine mammal monitoring team(s). For example, the HRG acoustic equipment operator, pile driving personnel, etc., is required to immediately comply with any call for a delay or shutdown by the Lead PSO. Any disagreement between the Lead PSO and the Project personnel 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 will 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 will include information and resources available regarding applicable Federal laws and regulations for protected species. US Wind will provide documentation of training to NMFS. Since the proposed rule, NMFS has added requirements for a description of the training program to be provided to NMFS at least 60 days prior to the initial training before in-water activities begin and for confirmation of all required training to be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating Project activities. These measures were added in response to several commenters' concerns regarding strengthening mitigation and monitoring measures.

North Atlantic Right Whale Awareness Monitoring

US Wind must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of Coast Guard VHF Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (e.g., establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and PAM efforts and opportunities (outside of US Wind's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales. The vessel strike avoidance measures apply to all vessels associated with the Project within U.S. waters and on the high seas.

Vessel Strike Avoidance Measures

Both the proposed and this final rule contain numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. These measures must be followed unless doing so would create

safety risks as described in the regulatory text. 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 further avoid vessel strikes to the extent practicable. While many of these measures are proactive, intended 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 marine mammal is sighted by Project personnel. The mitigation requirements are described generally here and in detail in the regulatory text at the end of this final rule (50 CFR 217.344(b)). US Wind will be required to comply with these measures, except under circumstances when doing so would create an imminent and serious threat to a person or vessel, or to the extent that a vessel is unable to maneuver and, because of the inability to maneuver, the vessel cannot comply.

While underway, US Wind is required to monitor for and maintain a safe 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 and slow down, stop their vessel, or alter course as appropriate to avoid striking any marine mammal. The dedicated visual observer, equipped with 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).

For all Project-related vessels (regardless of size), the vessel is required to immediately reduce speeds to 10 kn (11.5 mph) or less if any large whale, or large assemblage of non-delphinid cetaceans is observed within 500 m of the vessel. Additionally, all Project vessels, regardless of size, must maintain a 100-m minimum separation zone from sperm whales and non-North Atlantic right whale baleen species. Vessels are also required to keep a minimum separation distance of 50 m from all delphinid cetaceans and pinnipeds, with an exception made for those species that approach the vessel (i.e., bow-riding dolphins). If any of these non-North Atlantic right whale marine mammals are sighted, 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 100 m (for sperm
whales and non-North Atlantic right

whale large whales) or 50 m (for
delphinids and pinnipeds).

TABLE 8—VESSEL STRIKE AVOIDANCE SEPARATION ZONES

Marine mammal species	Vessel separation zone (m)
North Atlantic right whale	500
Other ESA-listed species and large whales	100
Other marine mammals ¹	50

¹ With the exception of seals and delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*, as described below.

All of the Project-related vessels are required to comply with the measures within this rulemaking for operating vessels around North Atlantic right whales and other marine mammals, as well as any existing NMFS vessel speed restrictions for North Atlantic right whales. When NMFS vessel speed restrictions are not in effect and a vessel is traveling at greater than 10 kn (11.5 mph), in addition to the required dedicated visual observer, US Wind is required to monitor the transit corridor in real-time with PAM prior to and during transits. To maintain awareness of North Atlantic right whale presence in the project area, vessel operators, crew members, and the marine mammal monitoring team will monitor U.S. Coast Guard VHF Channel 16, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any North Atlantic right whale or large whale detection will be immediately communicated to PSOs, PAM operators, and all vessel captains. All vessels will be equipped with an Automatic Information System (AIS) and US Wind must report all Maritime Mobile Service Identity (MMSI) numbers to NMFS Office of Protected Resources prior to initiating in-water activities. US Wind will submit a Marine Mammal Vessel Strike Avoidance Plan for NMFS approval at least 180 days prior to commencement of vessel use.

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.*, 2014; Martin *et al.*, 2015; Crum *et al.*, 2019).

Given the inherent low probability of vessel strike, combined with the vessel strike avoidance measures included herein, NMFS considers the potential for vessel strike to be unlikely and would not allow take from this activity under this final rule.

Seasonal and Daily Restrictions

Temporal and spatial 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 the protection of North Atlantic right whales. 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.

NMFS is requiring seasonal work restrictions to minimize the risk of noise exposure to North Atlantic right whales incidental to certain specified activities to the extent practicable. These seasonal work restrictions are expected to greatly reduce the number of takes of North Atlantic right whales. These seasonal restrictions also afford protection to other marine mammals that are known to use the project area with greater frequency during winter months, including other baleen whales. As described previously, no impact pile driving activities may occur December 1 through April 30.

No more than one foundation monopile, four 3-m pin piles for jacket foundations, or three 1.8-m pin piles for the Met tower will be installed per day. Monopiles must be no larger than 11-m

in diameter and pin piles must be no larger than 3-m in diameter. For all monopiles and pin piles, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. No more than one pile may be installed at a given time (*i.e.*, concurrent/simultaneous pile driving and drilling may not occur).

US Wind would not initiate pile driving earlier than 1 hour prior to civil sunrise or later than 1.5 hours prior to civil sunset, unless NMFS approves an Alternative Monitoring Plan as part of the Foundation Installation and Marine Mammal Monitoring Plan (*i.e.*, Nighttime Monitoring Plan) that reliably demonstrates the efficacy of detecting marine mammals at night with its proposed devices. Foundation installation will also not be initiated when the minimum visibility zones cannot be fully visually monitored, as determined by the lead PSO on duty. While monitoring itself is not mitigation, these measures contribute to more reliable detection efficiency and animals must be detected to trigger mitigative actions which reduce impacts.

Given the very small harassment zones resulting from HRG surveys and that the best available science indicates that any harassment from HRG surveys, should a marine mammal be exposed, would manifest as minor behavioral harassment only (*e.g.*, potentially some avoidance of the vessel), NMFS is not requiring any seasonal and daily restrictions for HRG surveys. However US Wind has planned only a limited amount of surveys (over 14 days) during daylight within the effective period of these regulations.

Noise Attenuation Systems

US Wind is required to employ noise abatement systems (NAS), also known as noise attenuation systems, during all foundation installation (*i.e.*, impact pile driving) activities to reduce the sound pressure levels that are transmitted through the water in an effort to reduce acoustic ranges to the Level A

harassment and Level B harassment acoustic thresholds and minimize, to the extent practicable, any acoustic impacts resulting from these activities. US Wind is required to use at least two NASs 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 or a double big bubble curtain combined with other NAS (e.g., hydro-sound damper, or an AdBm Helmholtz resonator), as well as the adjustment of operational protocols to minimize noise levels. As part of adaptive management, should the research and development phase of newer systems demonstrate effectiveness, US Wind may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation activities.

Two categories of NASs 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 to the equipment (e.g., hammer strike parameters). Primary NASs 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 NASs 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 SFV (see the *Sound Field Verification* section below and 50 CFR part 217—Regulations Governing The Taking And Importing Of Marine Mammals).

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. 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 bubble curtains for noise attenuation.

When a double big bubble curtain is used (noting a single bubble curtain is not allowed), US Wind is required to maintain numerous operational performance standards. These standards are defined in the regulatory text at the end of this rule, and include, but are not limited to, construction contractors must train personnel in the proper balancing of airflow to the bubble ring and US Wind must submit a performance test and maintenance report to NMFS. Corrections to the attenuation devices are to be carried out prior to impact pile driving. In addition, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed. If US Wind uses a noise mitigation device in addition to a double big bubble curtain, similar quality control measures are required. Should the research and development phase of newer systems demonstrate effectiveness, as part of adaptive management, US Wind may submit data

on the effectiveness of these systems and request approval from NMFS to use them during foundation installation activities.

US Wind is required to submit an SFV plan to NMFS for approval at least 180 days prior to installing foundations. They are also required to submit interim and final SFV data results to NMFS and make corrections to the NASs 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 devices are not required during HRG surveys as they cannot practicably be employed around a moving survey ship, but US 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., boomers) and turning 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 will be monitored by NMFS-approved PSOs and PAM operators as described in the regulatory text at the end of this rule. At least one PAM operator must review data from at least 24 hours prior to foundation installation, and must actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any North Atlantic right whale sighting at any distance by foundation installation PSOs, or

acoustically detected within the PAM monitoring zone (10 km), triggers a delay to commencing pile driving and shutdown. Any large whale sighted by a PSO or acoustically detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

Prior to the start of certain specified activities (*i.e.*, foundation installation, including soft-start, and HRG surveys), US Wind must ensure designated areas (*i.e.*, clearance zones as provided in tables 24 and 25) are clear of marine mammals prior to commencing activities to minimize the potential for and degree of harassment. For foundation installation, PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to the activity, where the zone must be confirmed free of marine mammals at least 30 minutes directly prior to commencing these activities. During this period, the clearance zones will be monitored by both PSOs and a PAM operator. If a marine mammal is observed within a clearance zone during the clearance period, the activity will be delayed and may not begin until the animal(s) has been observed exiting its respective zone, or until an additional time period has elapsed with no further sightings (*i.e.*, 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species). In addition, foundation installation will be delayed upon a confirmed PAM detection of a North Atlantic right whale if the PAM detection is confirmed to have been located within the North Atlantic right whale PAM clearance zone (10,000 m). Any large whale sighted by a PSO that cannot be identified to species must be treated as if it were a North Atlantic right whale for the purposes of mitigation. PSOs and PAM operators must continue monitoring throughout the duration of foundation installation and for 30 minutes post-completion of the activity.

Clearance and shutdown zones have been developed in consideration of modeled distances to relevant PTS thresholds with respect to minimizing the potential for take by Level A harassment. The clearance and shutdown zones for North Atlantic right whales during monopile, jacket foundation, and Met tower foundation installation are visual observations at any distance by PSOs or any acoustic detection within the PAM monitoring zone (10 km; table 24). For North Atlantic right whales, there is an additional requirement that the clearance zone may only be declared clear if no confirmed North Atlantic

right whale acoustic detections (in addition to visual) have occurred during the 60-minute monitoring period. The visual clearance zone for other large whales from monopile installation is equal to the modeled maximum R_{95} percent distance to the Level B harassment threshold (5,250 m). The clearance zone for other large whales from 3-m pin pile installation is equal to the modeled maximum R_{95} percent distance to the Level A harassment threshold (1,400 m). The clearance zone for other large whales from 1.8-m pin pile installation is equal to twice the modeled maximum R_{95} percent distance to the Level B harassment threshold given the very small Level B harassment zone (100 m), which could be encompassed by the bubble curtains. The clearance zone for non-large whales (*i.e.*, delphinids and pilot whales, harbor porpoises, and seals) from monopile and 3-m pin pile installation is equal to double the modeled maximum R_{95} percent distances to the Level A harassment threshold for harbor porpoise (the most sensitive species). The clearance zone for 1.8-m pin pile installation is equal to double the modeled maximum R_{95} percent distance to the Level B harassment threshold given Level A harassment thresholds were not exceeded for this activity (*i.e.*, 0 m).

Once an activity begins, any marine mammal entering their respective shutdown zone would trigger the activity to cease. In the case of foundation installation, the shutdown requirement may be waived if it is not practicable to shutdown the equipment due to imminent risk of injury or loss of life to an individual, risk of damage to a vessel that creates risk of injury or loss of life for individuals, or where the lead engineer determines there is pile refusal or pile instability. In situations when shutdown is called for during impact pile driving, but US 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. Specifically, pile refusal or pile instability could result in not being able to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to “let go”. During these periods of instability, the

lead engineer may determine a shut-down is not feasible because the shut-down combined with impending weather conditions may require the piling vessel to “let go”, which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. US Wind must document and report to NMFS all cases where the emergency exemption is taken.

After shutdown, foundation installation 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 foundation installation 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 by PSOs and PAM operators 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 24 and 25. US Wind is allowed to request modification to these zone sizes pending results of SFV (see the regulatory text at the end of this rule). Any changes to zone size would be part of adaptive management and would require NMFS’ approval. The 10 km PAM monitoring zone for North Atlantic right whales has been carried forward from the proposed rule into this final rule. A 10-km distance is a reasonable distance for a PAM system to monitor; thus, 10 km was added as the requirement for the PAM monitoring zone.

In addition to the clearance and shutdown zones that would be monitored both visually and acoustically, NMFS is requiring US Wind to establish a minimum visibility zone during foundation installation activities to ensure both visual and acoustic methods are used in tandem to detect marine mammals resulting in maximum detection capability. The minimum visibility zone is defined as the area over which PSOs must be able to visually detect marine mammals and must be visible for the duration of the 60-minute clearance period. This zone would extend from the location of the pile being driven out to 2,900 m (9,514 ft) for monopile installation, 1,400 m for 3-m pin pile installation, and 200 m for 1.8-m pin pile installation (table 24). During monopile and 3-m pin pile installation, the minimum visibility zone is equal to the modeled maximum

R_{95 percent} distances to the Level A harassment threshold for low-frequency cetaceans. The minimum visibility zone for 1.8-m pin piles is equal to the clearance zone, which is double the modeled maximum R_{95 percent} distance to the Level B harassment threshold (100 m) and four times the modeled maximum R_{95 percent} distance to the Level A harassment threshold (50 m) for low-frequency cetaceans. NMFS increased the 1.8-m pin pile minimum visibility zone given the very small zone sizes from this short (3 piles total) activity.

For HRG surveys, there are no mitigation measures prescribed for sound sources operating at frequencies greater than 180 kHz, as these would be expected to fall outside of marine mammal hearing ranges and would not result in harassment. However, all HRG survey vessels would be subject to the aforementioned vessel strike avoidance measures described earlier in this section. Furthermore, due to the frequency range and characteristics of some of the sound sources associated with lesser impacts, shutdown, clearance, and ramp-up procedures are not planned to be conducted during HRG surveys utilizing only non-impulsive sources (*e.g.*, other parametric sub-bottom profilers). Shutdown,

clearance, and ramp-up procedures are planned to be conducted during HRG surveys utilizing SBPs and other non-parametric sub-bottom profilers (planned survey equipment that may result in take of marine mammals are presented in table 3 of the proposed rule (89 FR 504, January 4, 2024)). PAM would not be required during HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impacts during HRG survey activities is limited.

US Wind will be required to implement a 30-minute clearance period of the clearance zones (table 25) immediately prior to the commencing of the survey, or when there is more than a 30-minute break in survey activities and PSOs have not been actively monitoring. If a marine mammal is observed within a clearance zone during the clearance period, ramp up (described below) may not begin until the animal(s) have been observed voluntarily exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals, and 30 minutes for all other species). When the clearance process has begun in

conditions with good visibility, including via the use of night vision equipment (*i.e.*, infrared (IR)/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations would be allowed to commence (*i.e.*, no delay is required) despite periods of inclement weather and/or loss of daylight.

Once the survey has commenced, US Wind would be required to shut down SBPs if a marine mammal enters a respective shutdown zone (table 25). In cases where the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (*i.e.*, no shutdown is required) so long as no marine mammals have been detected. The use of SBPs will not be allowed to commence or resume until the animal(s) has been confirmed to have left the shutdown zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting. Any large whale sighted by a PSO within 1,000 m of the SBPs that cannot be identified as a non-North Atlantic right whale would be treated as if it were a North Atlantic right whale for the purposes of mitigation implementation.

TABLE 9—MINIMUM VISIBILITY, CLEARANCE, SHUTDOWN, AND LEVEL B HARASSMENT ZONES DURING IMPACT PILE DRIVING, ASSUMING 10 dB OF ATTENUATION

Monitoring zone	North Atlantic right whales	Other large whales	Delphinids and pilot whales	Harbor porpoises	Seals
Minimum visibility zone ¹	Monopiles: 2,900 m. 3-m pin piles: 1,400 m. 1.8-m pin piles: 200 m.				
Clearance zone	Any distance (visual) from the pile driving location or within PAM Monitoring Zone.	Monopiles: 5,250 m 3-m pin piles: 1,400 m. 1.8-m pin piles: 200 m. ²	Monopiles: 500 m. 3-m pin piles, 1.8-m pin piles: 200 m. ³		
Shutdown zone	Any distance (visual) from the pile driving location or within PAM Monitoring Zone.	Monopiles: 2,900 3-m pin piles: 1,400 m. 1.8-m Pin piles: 100 m. ⁴	Monopiles: 250 m. 3-m pin piles, 1.8-m pin piles: 100 m. ⁵		
PAM monitoring zone ⁶	10,000 m.				
Level B Harassment (Acoustic Range, R _{95%})	Monopiles: 5,250 m. 3-m pin piles: 500 m. 1.8-m pin piles: 100 m.				

¹ The minimum visibility zone is equal to the modeled maximum R_{95 percent} distances to the Level A harassment threshold for low-frequency cetaceans for monopiles and 3-m pin piles. The minimum visibility zone for 1.8-m pin piles is equal to the clearance zone which is double the modeled maximum R_{95 percent} distance to the Level B harassment threshold (100 m) and four times the modeled maximum R_{95 percent} distance to the Level A harassment threshold (50 m) for low frequency cetaceans. NMFS increased the 1.8 m pile minimum visibility zone given the very small zone sizes from this short (3 piles total) activity.

² The clearance zone for other large whales from monopile installation is equal to the modeled maximum R_{95 percent} distance to the Level B harassment threshold (5,250 m). The clearance zone for other large whales from 3-m pin pile installation is equal to the modeled maximum R_{95 percent} distance to the Level A harassment threshold (1,400 m) given the Level B harassment zone is less than this distance (500 m). The clearance zone for other large whales from 1.8-m pin pile installation is equal to twice the modeled maximum R_{95 percent} distance to the Level B harassment threshold given the very small Level B harassment zone (100 m) which could be encompassed by the bubble curtains.

³ The clearance zone for non-large whales (*i.e.*, delphinids and pilot whales, harbor porpoises, and seals) from monopile and 3-m pin pile installation is equal to double the modeled maximum R_{95 percent} distance to the Level A harassment threshold for harbor porpoise (the most sensitive species). The clearance zone for 1.8-m pin pile installation is equal to double the modeled maximum R_{95 percent} distance to the Level B harassment threshold given Level A harassment thresholds were not exceeded for this activity (*i.e.*, 0 m). US Wind requested the clearance zone for non-large whales be identical for PSO implementation ease.

⁴ The shutdown zones for other large whales from monopiles and 3-m pin pile installation are equal to the modeled maximum R_{95 percent} distances to the Level A harassment threshold for low-frequency cetaceans. The shutdown zone for other large whales from 1.8-m pin piles is equal to two times the modeled maximum R_{95 percent} distance to the Level A harassment threshold for low-frequency cetaceans.

⁵ The shutdown zones for non large whales from monopile and 3-m pin pile installation are equal to the modeled maximum R_{95 percent} distance to the Level A harassment threshold for harbor porpoise (the most sensitive species). The shutdown zone for non large whales from 1.8-m pin pile installation is equal to the modeled maximum R_{95 percent} distance to the Level B harassment threshold, given the Level A harassment thresholds were not exceeded for this activity (*i.e.*, 0 m). US Wind requested the shutdown zone for non large whales be identical for PSO implementation ease.

⁶ The PAM system must be capable of detecting baleen whales at 10,000 m during pile driving. The system should also be designed to detect other marine mammals; however, it is not required these other species be detected out to 10,000 m given higher frequency calls and echolocation clicks are not typically detectable at large distances.

TABLE 10—HRG SURVEY CLEARANCE AND SHUTDOWN ZONES

Marine mammal species	Clearance zone (m) ²	Shutdown zone (m)
North Atlantic right whale	500	500
Other ESA-listed species (<i>i.e.</i> , fin, sei, sperm whale)	500	100
Other marine mammals ¹	200	100

¹ With the exception of seals and delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*, as described below.

In addition, NMFS has included a measure requiring US Wind to shutdown pile driving or HRG surveys in the event of a live cetacean stranding where the NMFS Marine Mammal Stranding Network is engaged in herding or other interventions to return animals to the water. Marine mammals involved in live stranding events (or near-shore atypical milling) are considered especially susceptible to the effects of additional stressors. These shutdown procedures are not related to the investigation of the cause of any such stranding and their implementation is not intended to imply that the activity of the authorized entity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding. US Wind would be required to shut down pile driving activities according to the measure described in the regulatory text.

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. Typically, NMFS requires a soft-start procedure of the applicant performing four to six strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. For foundation installation, 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 US Wind, in consultation with NMFS, considering final design details including site-specific soil properties and other

considerations. A general soft-start requirement for impact pile driving is incorporated into the regulations. 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 and gradually increasing to the operating level over a period of approximately 30 minutes.

Soft-start and ramp-up will be required at the beginning of each day's activity 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 US Wind's fishery monitoring surveys impacting marine mammals is minimal, NMFS requires US 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 rule.

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 below. Since the proposed rule, we have clarified the number of platforms for PSOs to be a total of three platforms, including the pile driving vessel and two PSO support vessels, as the number of platforms was not specified in the proposed rule. In addition, we have added specific requirements for SFV monitoring.

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 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 (*i.e.*, 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 (*i.e.*, behavioral or physiological) to acoustic stressors (*i.e.*, 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 (i.e., 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 will be conducted before, during, and after all impact pile driving and HRG surveys. PAM will also be conducted during impact pile driving. Visual observations and acoustic detections will 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, near the HRG acoustic sources. PSOs will document all behaviors and behavioral changes, at any distance from the foundation installation locations (i.e., location of impact pile driving) and near the HRG acoustic sources. PSOs will document all behaviors and behavioral changes, in concert with distance from an acoustic source. Further, SFV during foundation installation and unexploded ordnance (UXO)/munition of explosive concern (MEC) detonation is required to ensure compliance and that the potential impacts are within the bounds of that analyzed. The required monitoring, including PSO and PAM Operator qualifications, is described below, beginning with PSO measures that are applicable to all the aforementioned activities and PAM (for specific activities).

Protected Species Observer and PAM Operator Requirements

US 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 and HRG surveys. 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 US Wind to conduct PAM by PAM operators during impact pile driving and vessel transit.

The inclusion of PAM, which would be conducted by NMFS-approved PAM operators, following standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind, combined with visual data collection, is a valuable way to provide the most accurate record of species presence as possible. 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 or 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, NMFS will consider and approve these set-ups, as appropriate, on a case-by-case basis during the PAM Plan review. Specifically, US Wind will be required to provide a plan that describes an optimal configuration for collecting the required marine mammal data, based on the real-world circumstances in the project area, recognizing that we will continue to learn more as monitoring results from other wind projects are submitted.

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 trainer requirements referenced below and further specified in the regulatory text at the end of this rule. PSOs can act as PAM operators or visual PSOs (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

NMFS will provide PSO and PAM operator approvals in the context of the need to ensure that PSOs and PAM operators have the necessary training and/or experience to carry out their duties competently. NMFS may approve PSOs as conditional or unconditional. Conditional approval may be given to one who is trained but has not yet attained the requisite experience. 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 rule (see § 217.345(a)(6)).

Conditionally-approved PSOs will be paired with an unconditionally-approved PSO 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., together, the 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. US 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 US Wind at least 30 days prior to the start of the Project. Should US Wind require additional PSOs or PAM operators throughout the Project, US 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, generally speaking, with more PSOs being 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. 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 rule.

At least three PSOs must be on duty at a time on the foundation installation vessel/platform. A minimum of three PSOs must be active on each of at least two dedicated PSO vessels. US Wind must employ a minimum of three PSO platforms, including the pile driving platform and at least two PSO vessels. This requirement has been added since the proposed rule in response to a comment from the Commission to clarify the number of required PSO platforms during pile driving activity. The vessel must be located at the best vantage point to observe and document marine mammal sightings in proximity to the clearance and, if applicable, shutdown zones. At least 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.

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.

As part of their 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 (e.g., numbers of animals and their behavior), 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 rule.

US Wind is required to submit a Foundation Installation Monitoring Plan and a PAM Plan to NMFS 180 days in advance of foundation installation activities. The Plan must include details regarding PSO and PAM monitoring protocols and equipment proposed for use, as described in the regulatory text at the end of this rule. NMFS must approve the plan prior to foundation installation activities commencing. Specific details on NMFS' PSO or PAM operator qualifications and requirements can be found in 50 CFR part 217, subpart II, set out at the end of this rule. Additional information can be found in US Wind Marine Mammal Monitoring and Mitigation Plan (appendix B) on the NMFS' website at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-wind-inc-construction-and-operation-maryland-offshore-wind>.

Sound Field Verification

Previously in the proposed rule, US Wind had to conduct SFV measurements during all 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 that 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, etc.).

For the final rule, NMFS has expanded this requirement for SFV during foundation installation to align with the BiOp. At minimum, thorough SFV must be conducted in: for each construction year, for the first three monopiles installed and the first three full jacket foundations (all piles) installed. While pile driving is prohibited from December–April, if pile driving is required and must occur in December due to unforeseen circumstances, thorough SFV must be conducted on the first monopile and first jacket foundation (all piles) installed in December (winter sound speed profile). Thorough SFV must also be conducted for the first foundation for any foundation scenarios that were modeled for the exposure analysis but do not fall into one of the scenarios described above. During thorough SFV, installation of the next foundation (of the same type/foundation method) may

not proceed until US Wind has reviewed the initial results from the thorough SFV and determined that there were no exceedances of any distances to the identified thresholds based on modeling assuming 10 dB of attenuation.

If any of the thorough SFV measurements from any pile indicate that the distance to any isopleth of concern for any species is greater than those modeled assuming 10 dB of attenuation, US Wind must notify NMFS within 24 hours of reviewing the thorough SFV measurements and must implement the measures described in detail in the regulatory text at the end of this final rule for the next pile of the same type/installation methodology, as applicable.

Abbreviated SFV monitoring must be performed on all foundation installations for which the thorough SFV monitoring described above is not conducted. In addition, SFV measurements must be conducted upon commencement of turbine operations to estimate turbine operational source levels, in accordance with a NMFS-approved Foundation Installation Pile Driving SFV Plan. The measurements and reporting associated with SFV can be found in the regulatory text at the end of this rule. The requirements are extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that US 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 International Organization for Standardization (ISO) 18406, “Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving” (2017).

Reporting

Prior to any construction activities occurring, US Wind will provide a report to NMFS Office of Protected Resources that demonstrates that all US Wind personnel, including the vessel crews, vessel captains, PSOs, and PAM operators, have completed all required trainings.

NMFS will require standardized and frequent reporting from US Wind during the life of the regulations and the LOA. All data collected relating to the Project will be recorded using industry-standard software (e.g., Mysticetus or a similar software) installed on field laptops and/or tablets. US Wind is

required to submit weekly, monthly, annual, situational, and final 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, US Wind would be required to compile and submit weekly marine mammal monitoring reports for foundation installation activities 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.), and abbreviated SFV results. Weekly reports will be due on Wednesday for the previous week (Sunday to 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—US 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. The monthly report would identify which turbines become operational and when, and a map must be provided. Once all foundation pile installation is complete, monthly reports would no longer be required.

Annual Reporting—US Wind is required to submit an annual marine mammal monitoring (both PSO and PAM) report to NMFS Office of Protected Resources annually, describing, in detail, all of the information required in the monitoring section above for the previous calendar year. A final annual report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report.

Final Reporting—US Wind must submit its draft 5-year report(s) to NMFS Office of Protected Resources. The report must contain, but is not limited to, a description of activities conducted (including GIS files where relevant), and all visual and acoustic monitoring, including SFV and monitoring effectiveness, 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. Full PAM detection data, metadata, and location of recorders must be submitted within 90 days following completion of impact pile driving foundations and every 90 calendar days for transit lane PAM using the International Organization for Standardization (ISO) standard metadata forms and instructions available on the NMFS Passive Acoustic Reporting System website (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Concurrently, the full acoustic recordings from real-time systems must also be sent to the National Centers for Environmental Information (NCEI, <https://www.ncei.noaa.gov/products/passive-acoustic-data>) for archiving.

Situational Reporting—Specific situations encountered during the development of the Project would require 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 must be reported within 24 hours to NMFS Office of Protected Resources, the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866-755-6622) in the Northeast Region (if in the Southeast Region (NC to FL), contact 877-942-5343), and the U.S. Coast Guard within 24 hours.

In the event of a vessel strike of a marine mammal by any vessel associated with the Project or if Project activities cause a non-auditory injury or death of a marine mammal, US Wind must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine to Virginia), US Wind must call the NMFS Greater Atlantic Stranding Hotline. Separately, US Wind must also

and immediately report the incident to NMFS Office of Protected Resources and GARFO. US Wind must immediately cease all on-water activities, including pile driving, 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 MMPA. NMFS Office of Protected Resources may impose additional measures covered in the adaptive management provisions of this rule to minimize the likelihood of further prohibited take and ensure MMPA compliance. US Wind may not resume their activities until notified by NMFS.

In the event of any lost gear associated with the fishery surveys, US Wind must report to the loss to 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—US Wind is required to submit interim SFV reports after each foundation installation as soon as possible but within 48 hours for thorough SFV. Abbreviated SFV reports must be included in the weekly monitoring reports. A final SFV report for all foundation installations will be required within 90 days following completion of acoustic monitoring.

Adaptive Management

These regulations contain an adaptive management component. Our understanding of the effects of offshore wind construction activities (e.g., acoustic 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 will 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 US 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 research on marine mammals, noise impacts, or other related topics; and (3) any information that reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. Adaptive management decisions may be made at any time, as new information warrants it. NMFS may consult with US Wind regarding the practicability of the modifications.

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, or by 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, we listed the maximum number of allowable takes by Level A harassment and Level B harassment that could occur from US Wind’s specified activities based on the methods described in the proposed rule. 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 may be authorized in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more tax-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 may be authorized for any species or stock.

The Description of the Specified Activities section describes US Wind’s specified activities that may result in take of marine mammals and an estimated schedule for conducting those activities. US 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, US Wind would not be authorized to exceed the maximum annual of take authorized in any given year or across the five year effective period of the regulations, indicated in tables 6 and 7, respectively.

We base our analysis and negligible impact determination on the maximum number of takes expected to occur annually and across the 5-year effective period of these regulations, as well as extensive qualitative consideration of other contextual factors that influence the severity and nature of impact the takes have on the affected individuals and the number and the number of 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 3 given that some of the anticipated effects of US Wind’s construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds which have broad life history traits that support an overarching discussion of some factors considered within the analysis for those groups (*e.g.*, habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis, where appropriate, for example, for North Atlantic right whales given the population status. Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of US Wind’s 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, as well as the 5-year total; however, WTG, Met tower, and OSS foundation installation, which are expected to result in the majority of the impacts, are scheduled to occur within the first 3 years of the five year effective period of this rule (2025 through 2027) (table 20 in the proposed rule and tables 6 and 7 in this final rule).

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 detonations). The amount of harassment US Wind has requested, and NMFS has authorized, 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, modeling the impact installation of all piles at a maximum hammer energy and application of the May sound speed profile to all months within a given season. The exposure model results do not reflect the clearance or shutdown measures or avoidance response. The amount of take requested and authorized also reflects careful consideration of other data (*e.g.*, group size data) and, for Level A harassment potential of some large whales, the consideration of mitigation measures. For all species, the amount of take 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 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 the specified 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 the specified 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 exposures that might result in Level B harassment (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 avoidance response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day or more. Such severe behavioral effects are expected to occur infrequently, though, and given the extensive mitigation and monitoring measures included in this rule, we expect severe behavioral effects to be minimized.

Many species perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, a 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 1 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 up to 10–45 m in the ECRs, and 13 to 41.5 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 important to identify that the estimated number of takes for each stock does not necessarily equate to the number of individual marine mammals expected to be harassed (which may be lower, depending on the circumstances), but rather to the instances of take (*e.g.*, exposures above the Level B harassment thresholds) that may occur. These instances may represent brief exposures of either seconds to minutes for HRG surveys, or, in some cases, longer durations of exposure within (but not exceeding) a day (*e.g.*, pile driving). Some members of a species or stock may

experience one exposure (*i.e.*, be taken on one day) as they move through an area, while other individuals may experience recurring instances of take over multiple days throughout the year, in which case the number of individuals taken is smaller than the total estimated take for that species or stock. 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. However, for non-migrating species and/or 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 US Wind, impact pile driving of foundation piles is most likely to result in a higher magnitude and severity of behavioral disturbance than HRG surveys. Impact pile driving has higher source levels and longer durations (on an annual basis) than HRG surveys. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation. While impact pile driving for foundation installation is anticipated to be most impactful for these reasons, impacts are minimized 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. All these measures are designed to avoid or minimize harassment. 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 would increase the overall capability to detect marine mammals rather than when one method is used alone.

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

reduce the likelihood of more significant behavioral impacts, for example 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 is one form of Level B harassment that marine mammals may incur through exposure to the specified activities and, as described earlier, the takes by Level B harassment may represent takes in the form of direct 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 pile driving is a broadband noise source but generates sounds in the lower frequency ranges (with most of the energy below 1–2 kHz, but with a small amount energy ranging up to 20 kHz); therefore, in general and all else being equal, we would anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.*, mysticetes) than other marine mammal hearing groups and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given that 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 US Wind's pile driving 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 required mitigation measures further reduce the potential for TTS in mysticetes.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold

for the onset of TTS was discussed previously (refer back to Estimated Take section). 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 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. 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

NMFS may authorize a very small amount of take by PTS to some marine mammal individuals. The numbers of annual takes by Level A harassment that may be authorized are relatively low for all marine mammal stocks and species (table 22). The only activity incidental to which we anticipate PTS may occur is from exposure to impact pile driving, 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 recorded 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 that 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 (*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, 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. 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. Masking may also 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. Low frequency signals are also more likely to overlap with the narrower low frequency calls of mysticetes, 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. As mentioned above, the project area does not overlap critical habitat for any species, and temporary avoidance of the pile driving area by marine mammals would likely displace animals to areas of sufficient habitat.

In summary, the nature of the specified activities, paired with habitat use patterns by marine mammals, makes it unlikely that the level of masking that could occur would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Construction activities (i.e., foundation installation) may result in fish and invertebrate mortality or injury very close to the source, and all of the specified 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 NAS during foundation installation would further limit the degree of impact. Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range but, because of the relatively small area of the habitat that may be affected at any given time (e.g., around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence 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. Although many species of marine mammal prey can detect electromagnetic fields, previous studies have shown little impacts on habitat use

(Hutchinson *et al.*, 2018). The inclusion of protective shielding on cables will also minimize any impacts of electromagnetic fields on marine mammal prey.

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 an extensive number of structures such as wind turbines are, in general, likely to result in local and broader oceanographic effects in the marine environment, and may disrupt dense aggregations and distribution of marine mammal zooplankton prey through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.*, 2021; Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022). However, the scale of impacts is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.*, 2020) to large-scale changes stretching hundreds of kilometers (Christiansen *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 119 foundations (114 WTGs, 4 OSSs, 1 Met tower) in the Lease Area, which will gradually become operational following construction completion. While there are likely to be oceanographic impacts from the presence of the 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, nor is the project area located in the vicinity of any key marine mammal foraging areas. For these reasons, if oceanographic features are affected by the Project during the effective period of the regulations, the impact on marine mammal habitat and their prey is likely to be comparatively minor.

The Maryland Wind BiOp provided an evaluation of the presence and operation of the Project on, among other species, listed marine mammals and their prey. Overall, the BiOp concluded that impacts from loss of soft 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 BiOp also concluded that while the presence and operation of the wind farm may change the distribution of plankton within the area of the wind farm locally, these changes are not expected to affect the oceanographic forces transporting zooplankton into the area. Regional distribution of plankton may vary from pre-wind facility conditions; however, given the lack of a known bathymetric feature that aggregates zooplankton prey in the lease area and acknowledging the information and uncertainty presented in the BiOp, the BiOp concluded that adverse effects on North Atlantic right whale foraging success due to near-field effects are not reasonably certain to occur. Relative to far-field effects (tens of kilometers from the outermost row of foundations in the Maryland Wind Lease Area), the BiOp does not anticipate disruption to conditions that would aggregate prey in or outside the Maryland Wind Energy Area (MD WEA) that would have significant effects on ESA listed species. This is due to the scale of the Project. Therefore, the BiOp concluded that an overall reduction in biomass of plankton is not an anticipated outcome of operating the Project. Thus, because broader 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 BiOp, measurable, detectable, or significant changes to marine mammal prey abundance and distribution from wind farm operation are not anticipated.

Mitigation To Reduce Impact on All Species

This rule includes an extensive suite of mitigation measures designed to minimize impacts on all marine mammals, with a focus on North Atlantic right whales. The Mitigation section discusses the manner in which the required mitigation measures reduce the magnitude and/or severity of the take of marine mammals. For impact pile driving of foundation piles, ten overarching mitigation measures are required: (1) seasonal work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4)

implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start; (7) use of noise attenuation technology; (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by US Wind's personnel must be reported to PSOs; (9) SFV monitoring; and (10) vessel strike avoidance measures to reduce the risk of a collision with a marine mammal and vessel. For HRG surveys, we are requiring six measures: (1) measures specifically for vessel strike avoidance; (2) specific requirements during daytime 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 US Wind's personnel must be reported to PSOs.

For activities with large harassment isopleths, US Wind will be required to reduce the noise levels generated to the lowest levels practicable and will be 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 (US Wind will not use a hammer energy greater than necessary 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. For all activities, 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, OSS, and Met tower foundation installation; HRG surveys), PAM (for impact foundation installation), and maintaining awareness of marine mammal sightings reported in the region during all specified activities will aid in detecting marine mammals that would trigger the implementation of the mitigation measures. The reporting requirements including SFV reporting (for foundation installation and foundation operation), 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

Five mysticete species (comprising five stocks) of cetaceans (North Atlantic right 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, impacts to prey, and TTS or PTS (in some cases).

NMFS reviewed recent PSO observational data from offshore wind projects in southern New England (*i.e.*, South Fork at OCS-A-0517 and Vineyard Wind 1 at OCS-A-0501) where pile driving construction activities occurred. During pile-driving construction activities for Vineyard Wind 1, in 2023 from early June through December (RPS, 2023), there were 36 whale observations consisting of 4 unidentified non-North Atlantic right whales, 17 detections of humpback whales, eight detections of fin whales, six detections of minke whales, and one unidentified baleen whale (RPS, 2023). Three of these observations of mysticetes (one humpback whale sighting, one fin whale sighting, and one group of three fin whales) occurred while the hammer was engaged (which was operating at full power). Behaviors noted included surfacing, blowing, fluking, and feeding. At South Fork, a total of 39 hours 32 minutes of active impact pile driving was conducted across installation of the 13 monopiles on 15 different days. The most PSO visual watch effort occurred aboard the Bokalift 2 (908 hours), and PSO effort from the four dedicated monitoring vessels ranged from 426 to 757 hours. In

total (with and without pile driving) foundation installation PSOs observed 348 mysticete groups comprising 552 individuals; 29 of these detections, totaling 51 individuals, occurred during pile driving (table 14 in South Fork Wind (2023)). South Fork's Trained Lookouts confirmed two separate sightings of individual NARWs during vessel transits in support of offshore construction-related activities during the reporting period. Each animal was observed opportunistically during non-transit periods when vessels were not underway. None of the observed behaviors of mysticetes noted by either the Vineyard Wind 1 or South Fork PSOs were indicative of distress, alarm, or other adverse reactions (RPS, 2023; South Fork Wind, 2023).

Mysticetes encountered in the project area are expected to primarily be migrating and, to a lesser degree, may be 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 feeding grounds located further north (*e.g.*, southern New England region, Gulf of Maine, Canada). While we acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving, 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 is 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 found further north. 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 amounts of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock, such as is indicated in table 22) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a

different individual; the behavioral impacts would, therefore, be expected to occur within a single day within a year—an amount that NMFS would not expect 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, for this Project, the duration of exposures will not be continuous throughout any given day, and pile driving will not occur on all consecutive days within a given year due to weather delays or any number of logistical constraints US Wind has identified. Species-specific analysis regarding potential for repeated exposures and impacts is provided below.

Fin, humpback, minke, and sei whales are the only 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 recent data from VW1 and South Fork, 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 a depleted and strategic stock 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 Level A harassment, serious injury, or mortality is anticipated or may be authorized for this species.

For North Atlantic right whales, this rule may allow up to ten takes to be

authorized, by Level B harassment only, over the 5-year period, with a maximum annual allowable take by Level B harassment of four (equating to approximately 1.18 percent of the stock abundance, if each take were considered to be of a different individual). The project area is known as a migratory corridor for North Atlantic right whales and given the nature of migratory behavior (*e.g.*, continuous path), as well as the very low number of total takes, we do not anticipate that any of the instances of take would represent repeat takes of any individual, though it could occur if whales are engaged in opportunistic foraging behavior. Barco *et al.* (2015) observed North Atlantic right whales engaging in open mouth behavior, north of the project area in Virginia coastal waters which is suggestive, though not necessarily indicative, of feeding. While opportunistic foraging may occur in the project area, the area does not support prime foraging habitat.

The highest density of North Atlantic right whales in the project area occurs in the winter (table 6). The Mid-Atlantic, including the project area, may be a stopover site for migrating North Atlantic right whales moving to or from southeastern calving grounds. North Atlantic right whales have been acoustically detected in the vicinity of the project area year-round (Bailey *et al.*, 2018) with the highest occurrences documented during late winter/early spring. Similarly, the waters off the coast of Maryland, including those surrounding the project area in the MD WEA, have documented North Atlantic right whale presence as the area is an important migratory route for the species to the northern feeding areas near the Gulf of Maine and Georges Banks and to their southern breeding and calving grounds off the southeastern United States (CETAP, 1982; LaBrecque *et al.*, 2015; Salisbury *et al.*, 2016; Davis *et al.*, 2017). However, comparatively, the project area is not known as an important area for feeding, breeding, or calving.

North Atlantic right whales range outside the project area for their main feeding, breeding, and calving activities (Hayes *et al.*, 2023). Additional qualitative observations include animals feeding and socializing in New England waters, north of the MD WEA (Quintana-Rizzo *et al.*, 2021). The North Atlantic right whales observed north of the MD WEA were primarily concentrated in the northeastern and southeastern sections of the Massachusetts WEA (MA WEA) during the summer (June–August) and winter (December–February). North Atlantic

right whale distribution shifted to the west into the Rhode Island/Massachusetts (RI/MA) WEA in the spring (March–May). Quintana-Rizzo *et al.* (2021) found that approximately 23 percent of the right whale population was present from December through May, and the mean residence time tripled to an average of 13 days during these months. The MD WEA is not in or near these areas important to feeding, breeding, and calving activities.

In general, North Atlantic right whales in the project area are expected to be engaging in migratory behavior. Given the species’ migratory behavior in the project area, we anticipate individual whales would be typically migrating through the area during most months when foundation installation would occur (given the seasonal restrictions on foundation installation, rather than lingering for extended periods of time). Other work that involves much smaller harassment zones (*e.g.*, HRG surveys) may also occur during periods when North Atlantic right whales are using the habitat for migration. It is important to note the activities occurring from December through May that may impact North Atlantic right whale would be HRG surveys which are planned to take place during years 2 and 3 for only 14 days each year from April through June and would not result in very high received levels. 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 of Specified Activities, 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 may be authorized. Any disturbance to North Atlantic right whales due to US Wind’s activities is expected to result in only temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or may be 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 number of takes of North Atlantic right whales to be authorized 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 would likely be limited to up to 119 days (114 for WTG monopile foundations, 4 days for OSS jacket foundations, and 1 day for Met tower pin pile foundations) over a maximum of 3 years, 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 specified activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors, such as migratory behavior of 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 these exposures are generally expected to occur to different individual right whales migrating through (i.e., most individuals would not be expected to be impacted on more than 1 day in a 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 migrating through the project area are not expected to remain in this habitat for extensive durations, and any temporarily displaced animals would be able to return to or continue to travel through and forage in these areas once activities have ceased.

Although acoustic masking may occur 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) 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, anticipated mitigation effectiveness, and likely avoidance behaviors. TTS is another potential form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving; however, any TTS would likely be of low amount, 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 of Specified Activities on 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, as described in the “Potential Effects of Specified Activities on Marine Mammals and Their Habitat” section of the proposed rule, 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 approximately hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by the planned activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment or 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, US Wind has proposed, and 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) will not only avoid the likelihood of vessel strikes but also will 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 will 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, US Wind will 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 Geographic Area of Specified Activities section, the Project will 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 area over which North Atlantic right whales may be harassed is relatively small compared to the width of the migratory corridor. The width of the migratory corridor, at the widest point across the corridor, offshore of Maryland where the corridor overlaps the Lease Area is approximately 163.8 km while the width of the Lease Area, at the longest point, is approximately 33.1 km. North Atlantic right whales may be displaced from their normal path and preferred habitat in the immediate activity area (primarily from pile driving activities), however, we do not anticipate displacement to be of high magnitude (e.g., beyond a few kilometers); thereby,

any associated bio-energetic expenditure is anticipated to be small. There are no known North Atlantic right whale feeding, 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 (noting again that North Atlantic right whale prey is not particularly concentrated in the project area relative to more northern foraging habitats). Therefore, any impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales is the seasonal moratorium on all foundation installation activities from December 1 through April 30, when North Atlantic right whale abundance in the project area is expected to be highest. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile driving noise above the Level B harassment threshold during their annual spring migration through the project area from calving grounds to primary foraging grounds (*e.g.*, Cape Cod Bay). NMFS expects that exposures to North Atlantic right whales will be reduced due to the additional required 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 may only begin in the absence of North Atlantic right whales (based on visual and passive acoustic monitoring). If pile driving has 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 unless a shutdown is not feasible due to risk of injury or loss of life or pile refusal or instability. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to foundation installation noise, it is unlikely a North Atlantic right whale would approach the sound source locations to the degree that they would 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 required 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 and any TTS that may occur would likely be of low degree and with recovery occurring quickly.

The required 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, US Wind proposed, and NMFS is requiring, 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.

For HRG surveys, the maximum distance to the Level B harassment threshold is 200 m. The estimated take, by Level B harassment only, associated with HRG surveys is to account for any North Atlantic right whale sightings PSOs may miss when HRG acoustic sources are active. However, because of the relatively 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 that 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 required mitigation measures, take by Level A harassment is unlikely 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 amount and intensity of Level B harassment on North Atlantic right whales, it is unlikely that the anticipated low-level exposures would lead to reduced reproductive success or survival.

As described above, no serious injury or mortality, or Level A harassment, of North Atlantic right whale is anticipated or may be 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 area, the majority of the individuals predicted to be taken (including no more than ten instances of take, by Level B harassment only, over the course of the 5-year rule, with an annual maximum of no more than four) would be impacted on only 1, or maybe 2, days in a year as North Atlantic right whales utilize this area for migration and would be transiting rather than residing in the area for extended periods of time. 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, US 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 only) anticipated and to be authorized would have a negligible impact on the North Atlantic right whale.

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 may be authorized for this species.

This rule would allow for the authorization of up to 41 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 2 and 18, respectively (combined, this annual take ($n=20$) equates to approximately 0.29 percent of the stock abundance if each take were considered to be of a different individual). The project area does not

overlap with any known areas of specific biological importance to fin whales. It is possible 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 one-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. 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. 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. There is no known foraging habitat for fin whales within the project area. Any fin whales in the project area would be expected to be migrating through the area and would have sufficient space to move away from Project activities.

Fin whales are frequently observed in the waters off of Maryland and are one of the most commonly detected large baleen whales in continental shelf waters, principally from Cape Hatteras in the Mid-Atlantic northward to Nova Scotia, Canada (CETAP, 1982; Hain *et al.*, 1992; BOEM 2012; Barco *et al.*, 2015; Edwards *et al.*, 2015; Bailey *et al.*, 2018; Hayes *et al.*, 2023). Fin whales have high relative abundance in the Mid-Atlantic and project area, and most observations occur in the winter and early spring months (Williams *et al.*, 2015d; Barco *et al.*, 2015), with larger group sizes occurring during the winter months (Barco *et al.*, 2015). However, fin whales typically feed in waters off of New England and within the Gulf of Maine, areas north of the project area, as New England and Gulf of St. Lawrence waters represent major feeding ground for fin whales (Hayes *et al.*, 2023). Hain *et al.* (1992) based on an analysis of neonate stranding data, suggested that calving takes place during October to January in latitudes of the U.S. mid-Atlantic region; however, it is unknown where calving, mating, and wintering occur for most of the population (Hayes *et al.*, 2023).

Given the documented habitat use within the area, some of the individuals taken may be exposed on multiple days. However, as described, the project area does not include areas where fin whales are known to concentrate for feeding or reproductive behaviors and the predicted takes are expected to be in the form of lower-level impacts. Given the magnitude and severity of the impacts discussed above (including no more than 18 takes, by Level A harassment and Level B harassment, over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 2 and 18 respectively), and in consideration of the required mitigation and other information presented, US 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 A harassment and Level B harassment) anticipated and to be authorized would have a negligible impact on the western North Atlantic stock of fin whales.

Humpback Whale

The West Indies 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 Geographic Area of Specified Activities, 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 would not be authorized. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS, of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

This final rule would allow for the authorization of up to 36 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment would be 2 and 16, respectively (combined, this maximum annual take (n=18) equates to approximately 1.29 percent of the stock abundance if each

take were considered to be of a different individual). Given that humpback whales are known to forage in areas just south of Maryland during the winter and could potentially be foraging off Maryland during this time as well, 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 of (n=2) humpback whales. The maximum amount of annual take to be authorized (n=14), by Level B harassment, is highest for impact pile driving.

As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section, humpback whales are known to occur regularly throughout the Mid-Atlantic Bight, including Maryland waters, with strong seasonality of peak occurrences during winter and spring (Barco *et al.*, 2015; Bailey *et al.*, 2018; Hayes *et al.*, 2023).

In the western North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the United States. Feeding is generally considered to be focused in areas north of the project area, including a feeding BIA in the Gulf of Maine/Stellwagen Bank/Great South Channel, but has been documented farther south and off the coast of Virginia. When foraging, humpback whales 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 be comprised 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, 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 one-half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which is lower than the full predicted hearing range of humpback 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. Limited foraging

habitat exists for humpback whales within the project area as their main foraging habitat is located further north. Any humpback whales in the project area would more likely be migrating through the area.

Given the magnitude and severity of the impacts discussed above (including no more than 36 humpback whale takes over the course of the 5-year rule, a maximum annual allowable take by Level A harassment and Level B harassment, of 2 and 16, respectively), and in consideration of the required mitigation measures and other information presented, US 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 to be authorized would 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 Geographic Area of Specified Activities, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or may be authorized for this species.

This final rule would allow for the authorization of up to 67 minke whale takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 6 and 41, respectively (combined, this annual take ($n=47$) equates to approximately 0.21 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 Geographic Area of Specified Activities 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.*, 2023). In the project area, minke whales are predominantly migratory and their known feeding areas are north, including a feeding BIA in the southwestern Gulf of Maine and George's Bank. Therefore, they would be more likely to be moving 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 described in the Description of Marine Mammals in the Geographic Area of Specified Activities 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, and 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 to be authorized through this action is not expected to exacerbate the UME in any way.

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 one-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. 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. 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. Limited foraging habitat for minke whales exists in the project area as major foraging habitats are located further north near New England. Any minke whales in the project area would be expected to migrate through the area and would have sufficient space to move away from Project activities.

Given the magnitude and severity of the impacts discussed above (including no more than 67 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 6 and 41, respectively), and in consideration of the required mitigation measures and other information presented, US 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 to be authorized would 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 may be authorized for this species.

This final rule would allow for the authorization of up to six takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be one and one, respectively (combined, this annual take ($n=2$) equates to approximately 0.03 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 Geographic Area of Specified Activities section, most of the sei whale distribution is concentrated in Canadian waters and seasonally in northerly U.S. waters, though they are uncommonly observed in the waters off of Maryland. 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 behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any potential PTS and TTS would likely be concentrated at one-half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which is below 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. There is no known foraging habitat that exists in the project area for sei whales. Any sei whales in the project area would be expected to be migrating through the area.

Given the magnitude and severity of the impacts discussed above (including no more than six takes over the course of the 5-year rule, and a maximum annual allowable take by Level A

harassment and Level B harassment, of one and one, respectively), and in consideration of the required mitigation measures and other information presented, US 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 to be authorized would 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.

All of the takes of odontocetes that may be authorized incidental to US Wind's specified activities are by pile driving and HRG surveys. No serious injury or mortality is anticipated or may be 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 HRG surveys. While we expect animals to avoid the area during foundation installation, their habitat range is extensive compared to the area ensouffled during these activities.

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 activity that would be conducted 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. 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 during HRG surveys, if it does occur, is anticipated to be very low in severity based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of Maryland are used by several odontocete species. None of these species 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 United States, and the waters off of Maryland, including the project area, do not contain any unique odontocete habitat features.

Dolphins and Small Whales (Including Delphinids)

The 10 species and 11 stocks included in this group for which NMFS may authorize take are not listed under the ESA; however, short-finned pilot whales are listed as Strategic under the MMPA. 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, mortality, or take by Level A harassment is anticipated or may be authorized for these species.

The 10 delphinid species for which NMFS may authorize take are: Atlantic spotted dolphin, Pantropical spotted dolphin, common bottlenose dolphin (coastal and northern migratory stocks), common dolphin, long-finned pilot whale, short-finned pilot whale, killer whale, rough-toothed dolphin, striped dolphin, and Risso's dolphin. This final rule would allow for the authorization of between 3 and 3,013 takes (depending on species), by Level B harassment only, over the 5-year period. The maximum annual allowable take for these species by Level B harassment, would range from 3 to 1,762, respectively (this annual take equates to approximately 0.07 to 24.0 percent of the stock abundance, depending on each stock, if each take were considered to be of a different individual).

For both stocks of bottlenose dolphins, given the comparatively higher number of total annual takes (1,591 for coastal and 1,768 for offshore) and the relative number of takes as compared to the stock abundance (24.0 and 2.81, respectively), primarily due to the progression of the location of impact pile driving each year, 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. For Atlantic spotted dolphins, Pantropical spotted dolphins, common dolphins, long- and short-finned pilot whales, killer whales, rough-toothed dolphins, striped dolphins, and Risso's dolphins, 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.

Dolphins and small delphinids engage in social, reproductive, and foraging behavior in the waters offshore of Maryland. However, the number of takes, likely movement patterns of the affected species, and the intensity of any Level B harassment, combined with the

availability of alternate nearby habitat that supports the aforementioned behaviors 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. No Level A harassment (PTS) is anticipated or may be authorized. Some TTS could occur, but it would be limited to the frequency ranges of the activity 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, US 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 to be authorized would have a negligible impact on all of the species and stocks addressed in this section.

Harbor Porpoise

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 nor 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 and may be authorized for this stock.

This final rule would allow for the authorization of up to 74 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 3 and 39, respectively (combined, this annual take ($n=42$) equates to approximately 0.04 percent of the stock abundance if each take were considered to be of a different individual). Given the number of takes, many of the takes likely represent exposures of different individuals on 1 day a year.

Regarding the severity of takes by Level B harassment, because harbor porpoises are particularly sensitive to

noise, it is likely that a fair number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. Given that foundation installation is scheduled to occur off the coast of Maryland and, given alternative foraging areas nearby, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals.

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 affect a relatively small portion of the individual's hearing range. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

Harbor porpoises are seasonally distributed (Hayes *et al.*, 2023). During fall (October through December) 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 (>1800 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 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 Maryland.

Given the magnitude and severity of the impacts discussed above, and in

consideration of the required mitigation and other information presented, US 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 to be authorized would have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Phocids (Harbor Seals, Gray Seals, and Harp Seals)

The harbor seal, gray seal, and harp seal are not listed under the ESA, and these stocks are not 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 Geographic Area of Specified Activities section, a UME was designated for harbor seals and gray seals from June 20 through July 20, 2023 but has since been closed. No serious injury or mortality is anticipated or may be authorized for any seal species.

As limited occurrence data for seals are available for the project area, take estimates for harbor seals, gray seals, and harp seals are presented as one estimate. For the three seal species, this final rule would allow for the total authorization of up to 496 seals by Level B harassment, over the 5-year period. The maximum annual allowable take for these species, by Level B harassment, would be 341 seals. If all of the allocated take was attributed to gray seals, this take would equate to 1.25 percent of the gray seal stock abundance, if each take were considered to be of a different individual. If all of the allocated take was attributed to harbor seals, this take would equate to 0.56 percent of the harbor seal stock abundance, if each take were considered to be of a different individual. If all of the allocated take was attributed to harp seals, this take would equate to 0.004 percent of the harp seal stock abundance. Gray seals, harbor seals, and harp seals are considered migratory and none of these species have specific feeding areas that have been designated in the area, therefore, it is likely that takes of seals would represent exposures of different individuals throughout the Project duration.

Harp seals are considered extralimital in the project area, however, harp seal strandings have been documented in Maryland during the winter and spring (Hayes *et al.*, 2023; NAB, 2023a; NAB, 2023b). Harbor and gray seals occur in Maryland waters most often from late

winter to early spring, with harbor seal occurrences being more common than gray seals (Hayes *et al.*, 2023). Seals are more likely to be close to shore (*e.g.*, closer to the edge of the area ensnified above NMFS' harassment threshold), such that exposure to foundation installation and HRG surveys would be expected to be at comparatively lower levels. Although a gray seal rookery may occur off the coast of Cape Henlopen, north of the project area, based on the distance of this area from the project area it is not expected that in-air sounds produced would cause the take of hauled out pinnipeds. As this is the closest documented pinniped haul-out to the project area, NMFS does not expect any harassment to occur, nor plans to authorize any take from in-air impacts on hauled out seals.

As described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, 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 potential 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 50 CFR part 217—Regulations Governing the Taking and Importing of Marine Mammals Incidental to Specified Activities.

As described above, noise from pile driving is mainly low-frequency and, while any TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), TTS would not occur at frequencies around 5 kHz, where pinniped hearing is most susceptible to noise-induced hearing loss (Kastelein *et al.*, 2018). No Level A harassment (PTS) is anticipated or may be authorized. In summary, any TTS would be of small degree and not occur

across the entire, or even most sensitive, hearing range. Hence, any impacts from TTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, US 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 may be authorized would have a negligible impact on harbor, gray, and harp seals.

Negligible Impact Determination

No mortality or serious injury is anticipated to occur or may be 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 for which take may be authorized 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 marine mammal take from all of US 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 (86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The final rule allows for incidental take (by Level A harassment and/or Level B harassment) of 19 species of

marine mammal (with 20 managed stocks). The maximum number of instances of takes by combined Level A harassment and Level B harassment possible within any one year and that would be authorized relative to the best available population abundance is less than one-third for all species and stocks potentially impacted.

For 13 of these species (13 stocks), the allowable take by Level A and/or Level B harassment equates to less than 1 percent as compared to the stock abundance. For five stocks, the allowable take by Level A and/or Level B harassment equates to less than 5 percent as compared to the stock abundance, and for one stock the take by Level A and/or Level B harassment equates to just under 25 percent as compared to the stock abundance (coastal stock of bottlenose dolphins), assuming that each instance of take represents a different individual. Specific to the North Atlantic right whale, the maximum amount of take in any given year, which is by Level B harassment only, is four, or 1.18 percent of the stock abundance, assuming that each instance of take represents a different individual. Please see table 22 for information relating to this small numbers analysis.

Based on the analysis contained herein of the planned 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 the NOAA GARFO.

This final rule allows for the take of three marine mammal species listed under the ESA: North Atlantic right, fin, and sei whales. The Permits and Conservation Division requested initiation of section 7 consultation on December 5, 2023, with GARFO for the promulgation of the rulemaking. NMFS GARFO issued a BiOp on June 18, 2024, concluding that the promulgation of the rule and issuance of 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 BiOp is available at: <https://repository.library.noaa.gov/view/noaa/61632>.

US Wind is required to abide by these promulgated regulations, as well as the reasonable and prudent measure and terms and conditions of the BiOp and Incidental Take Statement, as issued by NMFS.

National Environmental Policy Act (NEPA)

To comply with NEPA (42 U.S.C. 4321 *et seq.*) and the NOAA Administrative Order 216–6A, NMFS must evaluate our proposed action (*i.e.*, promulgation of regulation) and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the BOEM 2024 Final EIS (FEIS), which was finalized on, and is available at: <https://www.boem.gov/renewable-energy/state-activities/maryland-offshore-wind-final-environmental-impact-statement-eis>.

When acting as a cooperating agency, as is the case with this Project, NMFS may satisfy its independent NEPA obligations by either preparing a separate NEPA analysis for its issuance of an incidental take authorization or, if appropriate, by adopting the NEPA analysis prepared by the lead agency (40 CFR 1506.3(b)). In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2024 Maryland Offshore 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 2024 Maryland Offshore Wind FEIS through a joint Record of Decision (ROD) with BOEM. The joint ROD for adoption of the 2024 Maryland Offshore Wind FEIS and promulgation of this final rule and subsequent issuance of a

LOA can be found at: <https://www.boem.gov/renewable-energy/state-activities/maryland-offshore-wind>.

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 (RFA)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) directly affected by the rule. However, no regulatory flexibility analysis is required if the head of an agency, or that person's designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation for the Department of Commerce certified at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. US Wind, the sole entity subject to these requirements, is not a small governmental jurisdiction, small organization or small business. We received no information that changes the factual basis of this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act (PRA)

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 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 CZMA requires Federal actions within and outside the coastal zone that have reasonably foreseeable effects on any coastal use or natural resource of

the coastal zone be consistent with the enforceable policies of a State's federally approved coastal management program (16 U.S.C. 1456(c)). NMFS has determined that US Wind's application for incidental take regulations is not an activity listed by the MD DNR pursuant to 15 CFR 930.53 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. Consistent with 15 CFR 930.54, NMFS published Notice of Receipt of US Wind's application for this incidental take regulation in the **Federal Register** on May 2, 2023 (88 FR 27453) and published the proposed rule on January 4, 2024 (89 FR 504). The State of Maryland did not request approval from the Director of NOAA's Office for Coastal Management to review US Wind's application as an unlisted activity, and the time period for making such request has expired. Therefore, NMFS has determined the ITA 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 26, 2024.

Samuel D. Rauch III,

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

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 II, consisting of §§ 217.340 through 217.349, to read as follows:

Subpart II—Taking Marine Mammals Incidental to the Maryland Offshore Wind Project Offshore of Maryland

Sec.

- 217.340 Specified activity and specified geographical region.
- 217.341 Effective dates.
- 217.342 Permissible methods of taking.
- 217.343 Prohibitions.
- 217.344 Mitigation requirements.
- 217.345 Monitoring and reporting requirements.
- 217.346 Letter of Authorization.
- 217.347 Modifications of Letter of Authorization.

217.348–217.349 [Reserved]

Subpart II—Taking Marine Mammals Incidental to the Maryland Offshore Wind Project Offshore of Maryland**§ 217.340 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply to activities associated with the Maryland Offshore Wind Project (hereafter referred to as the “Project”) by US Wind, Inc. (hereafter referred to as “LOA Holder”), and those persons it authorizes or funds to conduct activities on its behalf in the area 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, defined as waters from Cape Hatteras, North Carolina to Cape Cod, Massachusetts and extending into the west Atlantic to the 100-meter (m) isobath, and includes, but is not limited to, the Bureau of Ocean Energy Management (BOEM) Lease Area Outer Continental Shelf

(OCS)—A 0490 Commercial Lease of Submerged Lands for Renewable Energy Development, along the relevant Export Cable Corridors (ECC), and at the sea-to-shore transition points located within Delaware Seashore State Park.

(c) The specified activities are impact pile driving of wind turbine generator (WTG), offshore substation (OSS), and a meteorological tower (Met tower) foundations; high-resolution geophysical (HRG) site characterization surveys; vessel transit within the specified geographical region to transport crew, supplies, and materials; WTG and OSS operation; fishery and ecological monitoring surveys; placement of scour protection; and trenching, laying, and cable burial activities.

§ 217.341 Effective dates.

Regulations in this subpart are effective from January 1, 2025, through December 31, 2029.

§ 217.342 Permissible methods of taking.

Under the LOA, issued pursuant to §§ 216.106 of this chapter and 217.346, 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 0490 Commercial Lease of Submerged Lands for Renewable Energy Development and associated cable corridor, provided the LOA Holder is in complete compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA:

(a) By Level B harassment associated with the acoustic disturbance of marine mammals by impact pile driving (WTG, OSS, and Met tower foundation installation) and HRG site characterization surveys.

(b) By Level A harassment associated with auditory injury of marine mammals by impact pile driving of WTG foundations.

(c) Take by mortality or serious injury of any marine mammal species is not authorized.

(d) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the following species.

TABLE 1 TO PARAGRAPH (d)

Marine mammal species	Scientific name	Stock
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western Atlantic.
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic.
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine.
Mink whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal.
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia.
Killer whale	<i>Orcinus orca</i>	Western North Atlantic.
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic.
Pantropical spotted dolphin	<i>Stenella attenuata</i>	Western North Atlantic.
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Offshore. Northern Migratory Coastal.
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic.
Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic.
Short-finned pilot whale	<i>Globicephala macrorhynchus</i>	Western North Atlantic.
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic.
Rough-toothed dolphin	<i>Steno bredanensis</i>	Western North Atlantic.
Striped dolphin	<i>Stenella coeruleoalba</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.
Harp seal	<i>Pagophilus groenlandicus</i>	Western North Atlantic.

§ 217.343 Prohibitions.

Except for the takings described in § 217.342 and authorized by the LOA issued under this subpart, 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 the LOA issued under this subpart.

(b) Take any marine mammal not specified in § 217.342(d).

(c) Take any marine mammal specified in the LOA in any manner other than as specified in the LOA.

(d) Take any marine mammal specified in § 217.342(d), after National Marine Fisheries Service (NMFS) Office of Protected Resources determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

§ 217.344 Mitigation requirements.

When conducting the activities identified in § 217.340(c) within the

area described in § 217.340(b), LOA Holder must implement the mitigation measures contained in this section and any LOA issued under §§ 217.346 and 217.347. 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 (PSO), 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 U.S. 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 (DMA) 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;

(4) Any large whale observation by any project personnel or acoustic detection by a PAM operator must be conveyed to all vessel captains and on-duty PSOs. Any marine mammal observed by project personnel during pile driving must be conveyed to on-duty PSOs;

(5) 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;

(6) PSOs and PAM operators have the authority to call for a delay or shutdown to an activity, and LOA Holder must instruct all personnel regarding the authority of the PSOs and PAM operators. Any disagreements between a PSO, PAM operator, and the activity

operator regarding delays or shutdowns may only be discussed after the mitigative action has occurred;

(7) 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 or during a specified activity, the activity must be delayed or shut down, unless doing so 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 small odontocetes and pinnipeds, and 30 minutes for all other species with no further sightings;

(8) For in-water construction heavy machinery activities other than pile driving, if a marine mammal is on a path towards or comes within 10 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;

(9) All vessels must be equipped with a properly installed, operational Automatic Identification System (AIS) device and LOA Holder must report all Maritime Mobile Service Identity (MMSI) numbers to NMFS Office of Protected Resources prior to commencing initial transits;

(10) 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;

(11) 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; and

(12) The LOA Holder must also abide by the reasonable and prudent measures and terms and conditions of the Biological Opinion and Incidental Take Statement, as issued by NMFS, pursuant

to section 7 of the Endangered Species Act.

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures while in the specified geographical region, unless a deviation is necessary to maintain safe maneuvering speed and justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel; an emergency situation presents a threat to the health, safety, or life of a person; or when a vessel is actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response. An emergency is defined as a serious event that occurs without warning and requires immediate action to avert, control, or remedy harm. Speed over ground will be used to measure all vessel speed restrictions.

(1) Prior to the start of the Project's activities involving vessels, all vessel personnel 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. 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 Office of Protected Resources prior to vessel activities;

(2) LOA Holder, regardless of their vessel's size, must maintain a vigilant watch for all marine mammals 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 at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard) located at an appropriate vantage point for ensuring vessels are maintaining appropriate separation distances. Visual

observers must be equipped with alternative monitoring technology (*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, and reporting requirements in this subpart. Visual observers may be third-party observers (*i.e.*, NMFS-approved PSOs) or trained crew members, as defined in paragraph (b)(1) of this section;

(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 North Atlantic right whale sightings 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 Project's 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, regardless of size, must transit at 10 kn (11.5 mph) or less from November 1–April 30 in the specified geographic region;

(6) All LOA Holder's vessels, regardless of size, must travel 10 kn (11.5 mph) or less in any Seasonal Management Area (SMA) or active Slow Zones (*i.e.*, DMAs or acoustically triggered slow zone);

(7) LOA Holder's vessels, regardless of size, must immediately reduce speed to 10 kn 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 shall trigger an additional 24-hour period. If a North Atlantic right whale is reported via any of the monitoring systems (refer back to (b)(4) of this section) within 10 kilometers (km; 6.2 miles (mi)) of a transiting vessel(s), that vessel must operate at 10 knots (kn; 11.5 miles per hour (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 or less when any large whale (other than a North Atlantic right whale) or large assemblages of cetaceans is observed within 500 m (1,640 ft) of an underway vessel;

(9) If LOA Holder's vessel(s) are traveling at speeds greater than 10 kn

(*i.e.*, no speed restrictions are enacted) in a transit corridor from a port to the Lease Area (or return), in addition to the required dedicated visual observer, LOA Holder must monitor the transit corridor in real-time with PAM prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 kn (11.5 mph) or less for 24 hours following the detection. Each subsequent detection shall trigger a 24-hour reset. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 24 hours;

(10) 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 turn away from the whale(s), reduce speed, and shift the engine(s) to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 100 m; (328 ft);

(11) 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 or pinniped is sighted within 50 m (164 ft) of a transiting vessel, LOA Holder's vessel must turn away from the animal(s), 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;

(12) When a marine mammal(s) is sighted while LOA Holder's vessel(s) is transiting, the vessel must take action as necessary to avoid violating the relevant separation distances (*e.g.*, attempt to remain parallel to the animal's course, slow down, and avoid abrupt changes in direction until the animal has left the area). 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);

(13) LOA Holder's vessels underway must not divert or alter course to approach any marine mammal;

(14) 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; and

(15) LOA Holder must submit a Marine Mammal Vessel Strike Avoidance Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of vessel activity if vessels will operate over 10 kn (11.5 mph). 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 the approved Marine Mammal Vessel Strike Avoidance Plan.

(c) *WTG, OSS, Met tower foundation installation.* LOA Holder must comply with the following mitigation measures during impact pile driving activities associated with the installation of WTG, OSS, and Met tower foundations unless compliance is not practicable due to imminent risk of injury or loss of life to an individual, risk of damage to a vessel that creates risk of injury or loss of life for individuals, or the lead engineer determines there is risk of pile refusal or pile instability.

(1) Impact pile driving (*i.e.*, foundation and Met Tower installation) must not occur December 1 through April 30;

(2) Monopiles must be no larger than 11 m (36.1 ft) in diameter. No more than one monopile may be installed per day, unless otherwise approved in writing by NMFS. Pin piles for the OSSs must be no larger than 3 m in diameter. No more than four 3-m pin piles may be installed per day. Met tower pin piles must be no larger than 1.8 m in diameter. No more than two 1.8-m pin piles may be installed per day. The minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. The impact hammer rating must not exceed 4,400 kJ;

(3) LOA Holder must not initiate pile driving earlier than 1 hour prior to civil sunrise or later than 1.5 hours prior to civil sunset, and may only continue pile driving into darkness if stopping operations represents a risk to human health, safety, and/or pile stability, unless the LOA Holder submits, and NMFS approves, an Alternative Monitoring Plan, which would allow pile driving to begin after daylight hours have ended. Until this is submitted, reviewed, and approved by NMFS, LOA Holder may not begin any new pile driving outside of the daylight hours previously defined in this subsection;

(4) 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. Soft-start involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. The LOA Holder must comply with a soft-start protocol as described in the approved Pile Driving Plan;

(5) LOA Holder must implement clearance and shutdown zones, which must be measured using the radial distance around the pile being driven;

(6) LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.345. At least three on-duty PSOs must be stationed and observing on the foundation installation vessel/platform. A minimum of three PSOs must be active on each of the two dedicated PSO vessels. On-duty 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. Concurrently, PAM operator(s) must be actively monitoring for marine mammals with PAM 60 minutes before, during, and 30 minutes after pile driving in accordance with a NMFS-approved PAM Plan;

(7) PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to commencing pile driving. The entire minimum visibility zone must be visible (*i.e.*, not obscured by dark, rain, fog, *etc.*) for a full 60 minutes immediately prior to commencing pile driving. If PSOs cannot visually monitor the minimum visibility zone prior to foundation pile driving at all times, pile driving operations must not commence;

(8) All clearance zones must be confirmed to be free of marine mammals for 30 minutes immediately prior to the beginning of soft-start procedures. If a marine mammal is detected within or about to enter the applicable clearance zones, prior to the beginning of soft-start procedures, impact pile driving must be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species. PAM operators must immediately communicate all detections of marine mammals at any distance to the Lead PSO, including any determination regarding species identification,

distance, and bearing and the degree of confidence in the determination;

(9) For North Atlantic right whales, any visual observation or acoustic detection within the PAM monitoring zone must trigger a delay to the commencement of pile driving. The clearance zone may only be declared clear if no North Atlantic right whale acoustic or visual detections have occurred within the clearance zone during the 60-minute monitoring period. 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 nor acoustically detected for 30 minutes;

(10) 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 shut down 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) (see § 217.345);

(11) 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 small odontocetes and pinnipeds and 30 minutes for all other marine mammal species. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability at which time LOA Holder must use the lowest hammer energy practicable to maintain stability;

(12) LOA Holder must deploy at least two functional noise abatement systems that reduce noise levels to the modeled harassment isopleths, assuming 10-dB attenuation, during all impact pile driving and comply with the following measures:

(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 m³/(minute*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 for review. For piles for which thorough sound field verification (SFV) is carried out, this report must be submitted as soon as it is available but no later than when the thorough interim SFV report is submitted for the respective pile. Performance reports for piles with abbreviated SFV must be submitted with the weekly pile driving reports. Additionally, a full maintenance check (*e.g.*, manually clearing holes) must occur prior to each pile being installed. LOA Holder must develop and implement a maintenance plan that identifies the frequency of hose inspection, flushing, pressure tests, and re-drilling and that is designed to minimize the potential for sediment clogging to affect bubble curtain performance. Adjustments to the frequency of these maintenance steps must be made as necessary to ensure optimal performance of the bubble curtain system; and

(vi) Corrections to the bubble ring(s) to meet the performance standards in paragraph (c)(12) of this section must occur prior to impact pile driving of monopiles, 3-m (9.8 ft) pin piles, and 1.8-m (5.9 ft) pin piles. 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 this paragraph (c)(11) of this section.

(13) LOA Holder must implement PAM in accordance with the NMFS-

approved PAM Plan, as described in paragraph (c)(18) of this section. The PAM system components (*i.e.*, acoustic buoys) must not be placed closer than 1 km (3,280 ft) to the pile being driven so that the activities do not mask the PAM system. LOA Holder must demonstrate and prove 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 designed to detect all marine mammals to the maximum extent practicable, maximize baleen whale detections, and must be capable of detecting North Atlantic right whales within the PAM monitoring zone;

(14) LOA Holder must conduct thorough SFV measurements during pile driving activities associated with the installation of, at minimum, the first three monopile foundations, the first three full jacket foundations (inclusive of all pin piles for a specific jacket foundation), and the first foundation for any foundation scenarios that were modeled for the exposure analysis (*e.g.*, rated hammer energy, number of strikes, representative location) that does not fall into one of the previously listed categories for each of the three construction campaigns. Thorough SFV measurements must be conducted as follows:

(i) SFV 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 (2,460 ft) must be made. At each measurement location, there must be a near bottom and mid-water column hydrophone (measurement systems);

(ii) The recordings must be continuous throughout the duration of pile driving for 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, the signals prevent 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 (hydrophones, recording devices, hydrophone calibrators, cables, batteries, *etc.*), which exceeds the amount of equipment necessary to perform the measurements, such that technical issues can be mitigated before measurement; and

(vi) LOA Holder must submit interim SFV reports within 48 hours after each foundation is measured (see § 217.345(g) for interim and final reporting requirements).

(15) For thorough SFV on monopile and jacket foundations:

(i) During thorough SFV, installation of the next foundation (of the same type/foundation method) may not proceed until LOA Holder has reviewed the initial results from the thorough SFV and determined that there were no exceedances of any distances to the identified thresholds based on modeling assuming 10 dB attenuation. Subsequent SFV measurements are also required should larger piles be installed or if additional monopiles are driven that may produce louder sound fields than those previously measured (*e.g.*, higher hammer energy, greater number of strikes, *etc.*);

(ii) If any of the thorough SFV measurements from any foundation (monopile or jacket) indicate that the distances to the NMFS' marine mammal Level A harassment or Level B harassment thresholds for marine mammals (peak or cumulative) are greater than the modeled distances

(assuming 10 dB attenuation), before the next foundation is installed, LOA Holder must notify NMFS by email within 24 hours of reviewing the thorough SFV measurements as well as identify and propose for review and concurrence: additional, modified, and/or alternative noise attenuation measures or operational changes that present a reasonable likelihood of reducing sound levels to the modeled distances on subsequent foundations; provide a written explanation to NMFS Office of Protected Resources supporting that determination and requesting concurrence to proceed; and, following NMFS Office of Protected Resource's concurrence, deploy those additional measures or modifications on any subsequent foundation of the same pile type/installation methodology that are installed;

(iii) LOA Holder must also increase the clearance and shutdown zones for subsequent piles of the same type (*e.g.*, if triggered by SFV results for a monopile, for the next monopile) so that they are at least the size of the distances to those thresholds as indicated by SFV. For every 1,500 m that a marine mammal clearance or shutdown zone is expanded, additional PSOs must be deployed from additional platforms/vessels to ensure adequate and complete monitoring of the expanded shutdown and/or clearance zone. LOA Holder must deploy any additional PSOs consistent with the approved Marine Mammal Monitoring Plan in consideration of the size of the new zones and the species that must be monitored;

(iv) Following installation of a pile with additional, alternative, or modified noise attenuation measures or operational changes if thorough SFV results indicate that sound fields are within Level A harassment and B harassment thresholds, assuming 10 dB attenuation, thorough SFV must be conducted on two additional piles of the same type/installation method (for a total of at least three piles with consistent noise attenuation measures). If the thorough SFV results from all three of those piles are within the distances to isopleths of concern modeled assuming 10 dB attenuation, then LOA Holder must continue to implement the approved additional, alternative, or modified noise attenuation measures/operational changes. Use of the expanded clearance and shutdown zones must continue for additional piles until LOA Holder requests and receives concurrence from NMFS Office of Protected Resources and Greater Atlantic Regional Fisheries

Office (GARFO) to revert to the original clearance and shutdown zones;

(v) If, after all practicable measures that could be taken to reduce noise levels have been successfully implemented and exhausted, thorough SFV measurements continue to indicate that the distances to the marine mammal harassment thresholds are greater than those modeled assuming 10 dB attenuation, LOA Holder must consult with NMFS Office of Protected Resources to evaluate the circumstances before additional piles are installed; and

(vi) If, after additional measurements conducted pursuant to requirements of paragraph (14)(i) of this section, acoustic measurements indicate that ranges 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 a modification of the clearance and shutdown zones from the NMFS Office of Protected Resources. 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 (for either/or monopile and jackets) and ensure that subsequent foundations would be installed under conditions that are predicted to produce smaller harassment zones than those modeled assuming 10 dB of attenuation.

(16) Abbreviated SFV measurements must be conducted on the remaining piles for which thorough SFV is not conducted. Abbreviated SFV must be conducted as follows:

(i) SFV measurements must be made at a single acoustic recorder, consisting of a near-bottom and mid-water hydrophone, at approximately 750 m from the pile being driven, in the direction of lowest transmission loss to record sounds throughout the duration of all pile driving of each foundation. Reports of abbreviated SFV monitoring must be included in the weekly pile driving reports;

(ii) The abbreviated SFV data collected will be used to compare the noise levels defined as a result of thorough SFV;

(iii) Abbreviated SFV monitoring duration and equipment must comply with the conditions specified in paragraphs (c)(14)(ii) through (14)(v) of this section;

(iv) LOA Holder must review abbreviated SFV results for each pile within 24 hours of completion of the foundation installation. If measured levels at 750 m did not exceed the expected levels defined during thorough SFV, LOA Holder does not need to take any additional action. If measured levels

from abbreviated SFV for any pile are greater than expected levels (as defined by thorough SFV), LOA Holder must evaluate the available information from the pile installation to determine if there is an identifiable cause of the greater than expected sound levels (*i.e.*, a failure of the noise attenuation system), identify and implement corrective action, and report this information (inclusive of an explanation of the suspected or identified cause) to NMFS Office of Protected Resources and Greater Atlantic Regional Fisheries Office within 48 hours of completion of the installation of the pile, during which the greater than expected sound levels occurred. If LOA Holder can demonstrate that this greater than expected sound level was the result of a failure of the noise attenuation system (*e.g.*, loss of a generator supporting a bubble curtain such that one bubble curtain failed during pile driving) that can be remedied in a way that returns the noise attenuation system to pre-failure conditions, or if there is another satisfactory explanation for the increase in sound that is not expected to be repeated for subsequent piles, LOA Holder can request concurrence from NMFS to proceed without thorough SFV monitoring that would otherwise be required within 72 hours. LOA Holder is required to remedy any such failure of the noise attenuation system prior to carrying out any additional pile driving;

(v) If results of abbreviated SFV monitoring for any pile exceed the expected noise levels at 750 m established through the initial thorough SFV, LOA Holder must resume thorough SFV monitoring (as described in paragraph (c)(15)(i) of this section) for installation of the same foundation type and installation method within 72 hours after the completion of pile driving with an exceedance. LOA Holder can request concurrence from NMFS Office of Protected Resources and Greater Atlantic Regional Fisheries Office to resume abbreviated SFV following submission of an interim report from thorough SFV that demonstrates ranges to the Level A harassment and Level B harassment thresholds within expected values (assuming 10 dB attenuation). LOA Holder may automatically resume abbreviated SFV monitoring if three consecutive thorough SFV reports indicate ranges to the Level A harassment and Level B harassment thresholds are within modeled distances (assuming 10 dB attenuation); and

(vi) If results from any thorough SFV monitoring triggered by results from abbreviated SFV indicate that ranges to the Level A harassment and Level B harassment thresholds (assuming 10 dB

attenuation) are larger than expected values, NMFS Office of Protected Resources and Greater Atlantic Regional Fisheries Office will meet within 3 business days to discuss the results of SFV monitoring, the severity of exceedance of distances to identified isopleths of concern, the species affected, and modeling assumptions, and whether the SFV results demonstrate the magnitude and degree of impacts from the Project are greater than those considered in this final rulemaking. Implementation of additional measures to reduce pile driving noise and/or additional thorough SFV may also be required.

(17) LOA Holder must conduct SFV measurements during turbine operations to estimate turbine operational source levels, in accordance with a NMFS-approved SFV Plan. SFV must be conducted in the same manner as previously described in paragraphs (c)(14)(ii) and (iii) of this section, with appropriate adjustments to measurement distances, number of hydrophones, and hydrophone sensitivities being made, as necessary.

(18) 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/entire jacket foundation (inclusive of all pin piles for a jacket foundation) installation sites selected for SFV measurements are representative of the rest of the monopile and/or jacket foundation 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;

(19) 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 the planned start of pile driving

and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS GARFO 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

(20) 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 PAM Plan if approved. The PAM Plan must include a description of all proposed PAM equipment and hardware, the calibration data, bandwidth capacity, 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 (2021). 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 GARFO Protected Resources Division.

(21) In the event of a cetacean live stranding (or near-shore atypical milling) event within 50 km of the pile driving activities, where the NMFS Stranding Network is engaged in herding or other interventions to return animals to the water, NMFS will advise of the need to implement shutdown procedures for all active pile driving activities operating within 50 km of the stranding. Shutdown procedures for live stranding or milling cetaceans include the following:

(i) If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, NMFS will advise that the shutdown around the animals' location is no longer needed;

(ii) Otherwise, shutdown procedures will remain in effect until NMFS determines and advises that all live animals involved have left the area (either of their own volition or following an intervention); and

(iii) If further observations of the marine mammals indicate the potential for re-stranding, additional coordination will be required to determine what measures are necessary to minimize that likelihood (*e.g.*, extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

(d) *HRG surveys.* The following requirements apply to HRG surveys operating sub-bottom profilers (SBP) (*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 this paragraph (d);

(2) LOA Holder is required to have at least one PSO on active duty per HRG vessel during HRG surveys that are conducted during daylight hours (*i.e.*, from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs on active duty per vessel during HRG surveys that are conducted during nighttime hours;

(3) 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 practicable source level to meet the survey objective, when in use, and must be turned off when they are not necessary for the survey;

(4) LOA Holder is required to ramp-up acoustic sources prior to commencing full power, which involves initiating source operation at a reduced energy level (relative to full operating capacity) followed by a waiting period, unless the equipment operates on a binary on/off switch. LOA Holder is also required to ensure visual clearance zones are observable (*e.g.*, not obscured from observation by darkness, rain, fog, *etc.*) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using acoustic sources specified in the LOA. Ramp-up and activation must be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up and activation may only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species, has elapsed with no further sightings;

(5) 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 should 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 prior to the initiation of ramp-up or activation (pre-start clearance). During this 30-minute pre-start clearance period, the entire applicable clearance zones must be visible, except as indicated in paragraph (d)(11) of this section;

(6) Ramp-ups must be scheduled so as to minimize the time spent with the source activated;

(7) 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;

(8) 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;

(9) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up or acoustic surveys 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 small odontocetes and pinnipeds, and 30 minutes for all other species;

(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 may 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 effective 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 may 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 (d)(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 small odontocetes and seals) or 30 minutes (for all other marine mammals) 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 (d)(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.

(e) *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 and its cooperating institutions, contracted vessels, or commercially hired captains must

implement the following “move-on” rule: If marine mammals are sighted within 1 nmi(1,852 m) of the planned location and 15 minutes before gear deployment, then LOA Holder and its cooperating institutions, contracted vessels, or commercially hired captains, as appropriate, 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 and its cooperating institutions, contracted vessels, or commercially hired captains must move again or skip the station;

(3) If a marine mammal is at risk of interacting with or becoming entangled in the gear after the gear 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 during the entire period of time that gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval) as well as for 15 minutes prior to deploying gear and for 15 minutes after haul back;

(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) All gear must be emptied as close to the deck/sorting area and as quickly as possible after retrieval;

(8) 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;

(9) 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 labels and markings on the gear, buoys, and buoy lines must also be compliant with the Atlantic Large Whale Take Reduction Plan regulations

at 50 CFR 229.32, and all buoy markings must comply with instructions received by the GARFO Protected Resources Division;

(10) All survey gear must be removed from the water whenever not in active survey use (*i.e.*, no wet storage); and

(11) All reasonable efforts, that do not compromise human safety, must be undertaken to recover gear.

§ 217.345 Monitoring and reporting requirements.

(a) *PSO and 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, 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 with a major in one of the natural sciences. 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 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 paragraphs (b)(6) and (8) 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 that must be submitted to NMFS. This requirement is waived for any PSOs and PAM operators that completed a relevant training course more than five years prior to seeking approval but have been working consistently as a PSO or PAM operator within the past five years;

(6) PSOs are responsible for obtaining NMFS' approval. NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who has completed training in the last 5 years but has not yet attained field experience. An unconditionally approved PSO 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 PSOs must be unconditionally approved and have a minimum of 90 days in a 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 must be paired with an unconditionally approved PSO;

(7) PSOs for HRG surveys may be unconditionally or conditionally approved. PSOs for foundation installation 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, and HRG surveys) must be designated as the Lead PSO or Lead PAM operator;

(9) LOA Holder must submit 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 have completed a PAM operator training course and demonstrate prior experience using PAM software, equipment, and real-time acoustic detection systems. They must demonstrate that they have prior experience independently analyzing archived and/or real-time PAM data to identify and classify baleen whale and other marine mammal vocalizations by species, including North Atlantic right whale and humpback whale vocalizations, and experience with deconflicting multiple species' vocalizations that are similar and/or received concurrently. PAM operators must be independent observers (*i.e.*, not construction personnel), trained to use relevant project-specific PAM software and equipment, and must also be able to test software and hardware functionality prior to beginning real-time monitoring. The PAM operator must be able to identify and classify marine mammal acoustic detections by species in real-time (prioritizing North Atlantic right whales and noting other marine mammal vocalizations, when detected). At a minimum, for each acoustic detection, the PAM operator must be able to categorically determine whether a North Atlantic right whale is detected, possibly detected, or not detected, and notify the Lead PSO of any confirmed or possible detections, including baleen whale detections that cannot be identified to species. If the PAM software is capable of localization of sounds or deriving bearings and distance, the PAM operator must demonstrate experience using this technique. A Lead PAM operator must meet all of these requirements and have

a minimum of 90 days in the specified role or sufficient alternative experience;

(12) PSOs may work as PAM operators and vice versa, pending NMFS-approval; however, they may only perform one role at any time and must not exceed work time restrictions, which must be tallied cumulatively; and

(13) 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 survey, foundation installation, *etc.*).

(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 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) PAM operator(s) must acoustically monitor for marine mammals prior to, during, and following all pile driving activities. PAM operators may be located on a vessel or remotely on-shore but must have the appropriate equipment (*i.e.*, computer station equipped with a data collection software system available wherever they are stationed) and be in real-time communication with PSOs and transiting vessel captains. The PAM operator must monitor to and past the clearance zone for large whales;

(3) For foundation installation, 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 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;

(4) 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. The PAM operator(s) must assist PSOs in ensuring full coverage of the clearance and shutdown zones;

(5) 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) 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;

(6) 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 (i.e., Mysticetus or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (i.e., delay);

(7) Any visual observations of marine mammals by any project personnel must be communicated immediately to on-duty PSOs and vessel captains associated with other project vessels to increase situational awareness;

(8) PSOs must use high magnification (25x) binoculars, standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. During foundation installation, at least two PSOs on the pile driving vessel must be equipped with functional Big Eye binoculars (e.g., 25 × 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. A minimum of three on-duty PSOs must be active on a dedicated PSO vessel. PAM operators must have the appropriate equipment (i.e., a computer station equipped with a data collection software system available wherever they are stationed) in accordance with the NMFS-approved PAM Plan as described in § 217.344(c)(20);

(9) 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;

(10) During periods of low visibility (e.g., darkness, rain, fog, poor weather

conditions, etc.), PSOs must use alternative technology (e.g., infrared or thermal cameras) to monitor the clearance and shutdown zones as approved by NMFS; and

(11) PSOs must remain in real-time contact with the PAM operators and construction personnel responsible for implementing mitigation (e.g., delay to pile driving) 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

(c) *PSO and PAM operator requirements during WTG, OSS, and Met Tower foundation installation.* The following measures apply to PSOs and PAM operators during WTG, OSS, and Met tower foundation installation 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 activities. If PSOs cannot visually monitor the minimum visibility zone prior to impact pile driving at all times using the equipment described in paragraphs (b)(6) and (7) of this section, pile driving operations 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 and at least three on-duty PSOs must be stationed on each dedicated PSO vessel. There must be a minimum of three PSO observation platforms during impact pile driving. 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 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 activities. The PAM operator must review all detections from the previous 24-hour period immediately prior to pile driving activities.

(d) *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) 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 two

PSOs during nighttime surveying (if it occurs);

(2) 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;

(3) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(4) 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.

(e) *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.

(f) *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.*, 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 LOAs issued under § 217.346;

(4) LOA Holder must compile and submit weekly reports during foundation installation to NMFS Office of Protected Resources that document the type of pile, pile diameter, daily start and stop of all pile driving associated with the Project; the start and stop of associated observation periods by PSOs; hammer log (number of strikes, max hammer energy, duration of piling), any changes to noise attenuation systems and/or hammer schedule, 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 must also include abbreviated SFV results. The weekly reports must also confirm that the required SFV was carried out for each pile and that results were reviewed on the required timelines. Weekly reports are due on Wednesday for the previous week (Sunday to 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, MMIS 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);

(6) Full PAM detection data, metadata, and location of recorders (or GPS tracks, if applicable) must be submitted within 90 calendar days following completion of impact pile driving foundations and every 90 calendar days for transit lane PAM using the International Organization for Standardization (ISO) standard metadata forms and instructions available on the NMFS Passive Acoustic Reporting System website (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Concurrently, the full acoustic recordings from real-time systems must also be sent to the National Centers for Environmental Information (NCEI, <https://www.ncei.noaa.gov/products/passive-acoustic-data>) for archiving.

(7) LOA Holder must submit a draft annual report to NMFS Office of Protected Resources no later than one year following date of LOA issuance within each 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 type; 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 (*i.e.*, days and duration of impact and vibratory pile driving, days, and amount of HRG survey effort, *etc.*); any PAM systems used; the results, effectiveness, and which noise attenuation systems were used during relevant activities (*i.e.*, impact pile driving); 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;

(8) 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. At a minimum, the draft and final 5-year report must include: the total number (annually and across all 5 years) of marine mammals of each species/stock detected and how many were detected within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity type; a summary table(s) indicating the amount of each activity type (*e.g.*, pile installation, HRG) completed in each of the 5 years and total; GIS shapefile(s) of the final location of all piles, cable routes, and other permanent structures including an indication of what year installed and began operating; GIS shapefile of all North Atlantic right whale sightings, including dates and group sizes; a 5-year summary and evaluation of all SFV data collected; a 5-year summary and evaluation of all PAM data collected; a 5-year summary and evaluation of marine mammal behavioral observations; a 5-year summary and evaluation of mitigation and monitoring implementation and effectiveness; a list of recommendations to inform environmental compliance assessments for future offshore wind actions. 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;

(9) For those foundation piles 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 as soon as they are available and prior to a subsequent foundation installation, but no later than 48 hours after the installation of each pile for which thorough SFV is carried out. The report must include, at minimum: a summary of pile installation activities (pile diameter, pile weight, pile length, water depth, sediment type, total installation time [start time, end time], duration of pile driving), hammer energies/schedule used during pile driving, including, the total number of strikes and the maximum hammer energy; the model-estimated acoustic ranges ($R_{95\%}$) to compare with the real-world sound field measurements; 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 (L_{50}) and L_5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment isopleths, calculated using the maximum-over-depth L_5 (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 each hydrophone array location 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;. All abbreviated SFV reports must include the results from the hydrophones at 750m and a comparison to the expected levels at 750 m based on the previously completed thorough SFV for comparable pile type and installation method.;

(10) The final results of SFV measurements from each foundation installation must be submitted as soon as possible, but no later than 90 days following completion of each event's SFV measurements. 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 (L_{50}) and L_5 (95 percent exceedance) statistics for each metric; the SEL and SPL power spectral density and/or one-third octave band levels (usually calculated as decade band levels) at the receiver locations should be reported; the sound levels reported must be in median, arithmetic mean, and L_5 (95 percent exceedance) (*i.e.*, average in linear space), and in dB; range of transmission loss 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, at the recording and foundation installation 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 hydrophone equipment and methods (*i.e.*, recording device, bandwidth/sampling rate; distance from the pile 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; a description of the noise abatement system and operational parameters (*e.g.*, bubble flow rate, distance deployed from the pile, *etc.*), and any action taken to adjust the noise abatement system. 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;

(11) 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, whichever comes first;

(12) Performance reports for each bubble curtain deployed must include water depth, current speed and direction, wind speed and direction, bubble curtain deployment/retrieval date and time, bubble curtain hose length, bubble curtain radius (distance from pile), diameter of holes and hole spacing, air supply hose length, compressor type (including rated cubic feet per minute (CFM) and model number), number of operational compressors, performance data from each compressor (including revolutions per minute (RPM), pressure, start times, and stop times), free air delivery (m^3/min), total hose air volume ($m^3/(min \cdot m)$), schematic of GPS waypoints during hose laying, maintenance procedures performed (pressure tests, inspections, flushing, re-drilling, and any other hose or system maintenance) before and after installation and the time and date of each of these procedures, and the length of time the bubble curtain was on the seafloor prior to foundation installation. Additionally, the report must include any important observations regarding performance (before, during, and after pile installation), such as any observed weak areas of low pressure. The report may also include any relevant video

and/or photographs of the bubble curtain(s) operating during pile driving;

(13) If a North Atlantic right whale is acoustically 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;

(14) 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 pile driving has ended and instruments have been pulled from the water. 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>. Submit the completed data templates to nmfs.nec.pacmdata@noaa.gov. The full acoustic recordings from all real-time hydrophones must also be sent to the National Centers for Environmental Information for archiving within 90 calendar days following completion of activities requiring PAM for mitigation. Submission details can be found at: <https://www.ncei.noaa.gov/products/passive-acoustic-data>;

(15) 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 (<https://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 to GARFO (nmfs.gar.incidental-take@noaa.gov) and NMFS Office of Protected Resources, and NMFS Northeast Fisheries Science Center (NEFSC; 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), and 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) 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), 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 Fisheries 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;

(v) 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

(16) LOA Holder must report any lost gear associated with the fishery surveys to the NOAA 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.

§ 217.346 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, LOA Holder must apply for and obtain an LOA;

(b) The LOA, unless suspended or revoked, may be effective for a period of time not to exceed December 31, 2029, the expiration date of this subpart;

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by the LOA, LOA Holder must apply for and obtain a modification of the LOA as described in § 217.347;

(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 must be consistent with the findings made for the total taking allowable under the regulations of this subpart; and

(f) Notice of issuance or denial of the LOA must be published in the **Federal**

Register within 30 days of a determination.

§ 217.347 Modifications of Letter of Authorization.

(a) The LOA issued under §§ 217.342 and 217.346 or this section for the activity identified in § 217.340 shall be modified upon request by LOA Holder, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS 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 LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) The LOA issued under §§ 217.342 and 217.346 or this section for the activities identified in § 217.340 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 the 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 the LOA include, but are not limited to:

(A) Results from LOA Holder's monitoring;

(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 §§ 217.342 and 217.346 or this section, the 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.

§§ 217.348–217.349 [Reserved]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Advanced Manufacturing Investment Credit Rules Under Sections 48D and 50; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 10009]

RIN 1545-BQ54

Advanced Manufacturing Investment Credit Rules Under Sections 48D and 50**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final rule.

SUMMARY: This document contains final regulations to implement the advanced manufacturing investment credit established by the CHIPS Act of 2022 to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States. The final regulations adopt with certain modifications rules proposed in the first of two notices of proposed rulemaking to implement the credit, other than proposed rules regarding the elective payment election that were addressed in the final rule adopted in connection with the second notice of proposed rulemaking. The final regulations provide the eligibility requirements for the credit, and a special 10-year credit recapture rule that applies if there is a significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern. The final regulations affect taxpayers that claim the advanced manufacturing investment credit.

DATES:

Effective date: These regulations are effective on December 23, 2024.

Applicability dates: For dates of applicability see §§ 1.48D-1(d), 1.48D-2(q), 1.48D-3(h), 1.48D-4(d), 1.48D-5(f) and 1.50-2(e).

FOR FURTHER INFORMATION CONTACT:

Concerning these final regulations, contact Lani Sinfield of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317-4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Authority**

This document amends the Income Tax Regulations (26 CFR part 1) by adding regulations authorized to be issued by the Secretary of the Treasury or her delegate (Secretary) under sections 50(a) and 7805(a) of the Internal Revenue Code (Code) regarding the application of sections 48D and

50(a)(3) and (a)(6)(D) and (E) of the Code (final regulations).

Section 50(a)(3)(C) provides an express delegation of authority to the Secretary to provide guidance relating to the recapture requirement in section 50(a)(3) for the advanced manufacturing investment credit, stating, “The Secretary shall issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provide for requirements for recordkeeping or information reporting for purposes of administering the requirements of this paragraph.”

In addition, section 50(a)(6)(D)(i) provides an express delegation of authority to the Secretary to determine, in coordination with the Secretary of Commerce and the Secretary of Defense, significant transactions, stating, “[t]he term ‘applicable transaction’ means, with respect to any applicable taxpayer, any significant transaction (as determined by the Secretary, in coordination with the Secretary of Commerce and the Secretary of Defense) involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in the People’s Republic of China or a foreign country of concern (as defined in section 9901(7) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021).”

The final regulations are also issued under the express delegation of authority under section 7805(a), which provides that “[t]he Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

Background*I. Overview*

Section 107(a) of the CHIPS Act of 2022 (CHIPS Act), enacted as Division A of Public Law 117-167, 136 Stat. 1366, 1393 (August 9, 2022), added section 48D to the Code to establish the advanced manufacturing investment credit (section 48D credit) as an investment credit for purposes of section 46 of the Code, which is a current year general business credit under section 38 of the Code.

Section 48D(a) provides that the section 48D credit is an amount equal to 25 percent of the qualified investment for any taxable year with respect to any advanced manufacturing facility of an eligible taxpayer. Section 48D(b)(1)

provides that the “qualified investment” with respect to any advanced manufacturing facility for any taxable year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of an advanced manufacturing facility. However, the section 48D credit only applies to property placed in service after December 31, 2022, and, for any property the construction of which begins prior to January 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after August 9, 2022 (the date of enactment of the CHIPS Act). See section 107(f)(1) of the CHIPS Act. In addition, the section 48D credit does not apply to property the construction of which begins after December 31, 2026. See section 48D(e).

Section 48D(b)(2) provides that, for purposes of section 48D(b), the term “qualified property” means tangible property with respect to which depreciation (or amortization in lieu of depreciation) is allowable that is integral to the operation of the advanced manufacturing facility if (I) constructed, reconstructed, or erected by the taxpayer, or (II) acquired by the taxpayer, if the original use of such property commences with the taxpayer. Qualified property includes any building or its structural components satisfying such requirements unless the building or portion of the building is used for offices, administrative services, or other functions unrelated to manufacturing.

Section 48D(b)(3) provides that the term “advanced manufacturing facility” means a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment.

Section 48D(b)(4) provides that the qualified investment with respect to any advanced manufacturing facility for any taxable year shall not include the portion of the basis of any such property that is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2) of the Code).

Section 48D(b)(5) states that rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of section 48D(a).

Section 48D(c) provides that, for purposes of the section 48D credit, an “eligible taxpayer” is any taxpayer that (1) is not a foreign entity of concern (as defined in section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103

of the CHIPS Act), and (2) has not made an applicable transaction (as defined in section 50(a) of the Code) during the taxable year.

Section 107(b) of the CHIPS Act added new section 50(a)(3), (6)(D) and (E) to the Code to provide special recapture rules for certain expansions in connection with advanced manufacturing facilities. Under section 50(a)(3)(A), if there is an applicable transaction by an applicable taxpayer before the close of the 10-year period beginning on the date such taxpayer placed in service property that is eligible for the section 48D credit, then the taxpayer's Federal income tax liability under chapter 1 of the Code (chapter 1) for the taxable year in which such transaction occurs must be increased by 100 percent of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any investment credit determined under section 46 that is attributable to the section 48D credit with respect to such property (applicable transaction recapture rule). Section 50(a)(3)(B) provides an exception to the applicable transaction recapture rule for an applicable taxpayer that demonstrates to the satisfaction of the Secretary that the applicable transaction has been ceased or abandoned within 45 days of a determination and notice by the Secretary. Section 50(a)(3)(C) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of the applicable transaction recapture rule, including regulations or other guidance providing for recordkeeping requirements or information reporting for purposes of administering the requirements of section 50(a)(3).

As added to the Code by section 107(b)(2) of the CHIPS Act, section 50(a)(6)(D) provides that for purposes of section 50(a), the term "applicable transaction" means, with respect to any applicable taxpayer, any significant transaction (as determined by the Secretary, in coordination with the Secretary of Commerce and the Secretary of Defense) involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in a foreign country of concern (as defined in section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act) other than certain transactions that primarily involve the expansion of manufacturing capacity for legacy semiconductors (as defined in

section 9902(a)(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act).

Section 50(a)(6)(E) defines an "applicable taxpayer" for purposes of section 50(a) as any taxpayer who has been allowed a section 48D credit for any prior taxable year.

II. Proposed and Temporary Regulations

On March 23, 2023, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG-120653-22) in the **Federal Register** (88 FR 17451) related to the section 48D credit under the authority granted by sections 48D(d), 50(a), and 7805(a) (March 2023 proposed regulations). The March 2023 proposed regulations primarily would apply long-established credit mechanics and procedures common to all investment tax credits (including the section 48D credit) previously set forth in regulations and subregulatory guidance. In addition, the March 2023 proposed regulations included proposed definitions and rules that would apply for determining who is an eligible taxpayer, what qualifies as qualified property or an advanced manufacturing facility, whether the beginning of construction requirement is met, and what qualifies as a significant transaction involving a material expansion of semiconductor manufacturing capacity in a foreign country of concern for purposes of the special 10-year recapture rule under section 50(a)(3). Consistent with the statutory directive in section 50(a)(6)(D)(i) to coordinate with the Department of Commerce and the Department of Defense regarding such significant transactions, the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, incorporated in the March 2023 proposed regulations definitional concepts set forth in proposed 15 CFR part 231 as contained in the proposed rule, *Preventing the Improper Use of CHIPS Act Funding*, published in the **Federal Register** (88 FR 17439) by the CHIPS Program Office, National Institute of Standards and Technology, Department of Commerce (Commerce Proposed Rule). The Commerce Proposed Rule would have provided guardrails to prevent the improper use of CHIPS Act funding overseen by the Department of Commerce. On September 25, 2023, the CHIPS Program Office, National Institute of Standards and Technology, Department of Commerce published the final rule, *Preventing the Improper Use*

of CHIPS Act Funding, in the **Federal Register** (88 FR 65600) to add part 231, subchapter C, to 15 CFR chapter II (Commerce Final Rule).

In addition, § 1.48D-6 of the March 2023 proposed regulations set forth the general requirements that would apply for making an elective payment election under section 48D(d), and the general requirement that an eligible taxpayer, partnership, or S corporation would need to comply with the registration procedures in proposed § 1.48D-6(c)(2) as a condition of, and prior to, any amount being treated as a payment under section 48D(d)(1) or (d)(2)(A)(i)(I). However, the March 2023 proposed regulations under proposed § 1.48D-6(c)(2) reserved on the procedures and additional information required for completing the pre-filing registration process.

On June 21, 2023, the Treasury Department and the IRS published proposed regulations (REG-105595-23) in the **Federal Register** (88 FR 40123) authorized by section 48D(d)(6) to update proposed § 1.48D-6 of the March 2023 proposed regulations (June 2023 proposed regulations). Also on June 21, 2023, the Treasury Department and the IRS published temporary regulations (TD 9975) in the **Federal Register** (88 FR 40086) authorized by section 48D(d)(6) under § 1.48D-6T to set forth mandatory information and registration requirements for taxpayers planning to make an elective payment election under section 48D(d) to treat the amount of the section 48D credit as a payment of Federal income tax, or in the case of a partnership or S corporation, to receive a payment in the amount of such credit. The temporary regulations are applicable to property placed in service on or after December 31, 2022, and during a taxable year ending on or after June 21, 2023, and will expire on June 12, 2026. A public hearing on the June 2023 proposed regulations was held on August 24, 2023. On March 11, 2024, the Treasury Department and the IRS published final regulations (TD 9989) in the **Federal Register** (89 FR 17596) authorized by section 48D(d)(6) under § 1.48D-6 to remove the temporary regulations (TD 9975) and adopt the June 2023 proposed regulations with modifications in response to all comments received on the proposed rules and all testimony heard at the public hearings held on July 26, 2023 (March 2023 proposed regulations) and August 24, 2023 (June 2023 proposed regulations) (March 2024 final regulations).

The Treasury Department and the IRS received more than 40 comments responding to the March 2023 proposed

regulations. A public hearing on the March 2023 proposed regulations was held on July 26, 2023. As described in the following Summary of Comments and Explanation of Revisions, this Treasury decision adopts §§ 1.48D–1 through 1.48D–5 and 1.50–2 of the March 2023 proposed regulations with certain modifications after full consideration of all comments received on those proposed rules and all testimony heard at the July 26, 2023, public hearing.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations set forth in §§ 1.48D–1 through 1.48D–5 and 1.50–2 retain the basic approach and structure of the March 2023 proposed regulations, with certain revisions in response to comments submitted by commenters in response to the March 2023 proposed regulations.

The Treasury Department and the IRS have refined and clarified certain aspects of the proposed regulations in these final regulations. Specifically, the definitions of “semiconductor manufacturing,” “semiconductor manufacturing equipment,” and “significant transaction” have been clarified. The final regulations do not set forth rules for § 1.48D–6 of the March 2023 proposed regulations, because the June 2023 proposed regulations updated § 1.48D–6 of the March 2023 proposed regulations and the June 2023 proposed regulations were finalized by the March 2024 final regulations. Consistent with the proposed regulations, the final regulations primarily apply long-established credit mechanics and procedures common to all investment tax credits (including the section 48D credit) previously set forth in regulations and subregulatory guidance. In addition, consistent with the statutory directive in section 50(a)(6)(D)(i) to coordinate with the Department of Commerce and the Department of Defense regarding the scope of significant transactions that are applicable transactions, the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, have incorporated in the final regulations definitional concepts, as determined by the Secretary of Commerce in the Commerce Final Rule in 15 CFR part 231, necessary to align the final regulations related to applicable transactions that result in the recapture of the section 48D credit with the provisions of the Commerce Final Rule.

II. Comments on and Changes to Proposed § 1.48D–1

Commenters requested that the final regulations address whether the taxpayer in proposed § 1.48D–1(c)(2) actually claims a rehabilitation credit. Proposed § 1.48D–1(c)(2) includes an example (proposed example) in which a taxpayer incurred capital expenditures to reconstruct a building. The proposed example indicates that all of the expenditures are “qualified investment” for purposes of the section 48D credit and a portion of those expenditures are also qualified rehabilitation expenditures (QREs) (as defined in section 47(c)(2) and § 1.48–12(c)) for purposes of the rehabilitation credit. The proposed example concludes that the amount of the taxpayer’s qualified investment does not include the portion of the basis of the property that is attributable to any QREs.

Section 48D(b)(4) and proposed § 1.48D–1(c)(1) provide that qualified investment with respect to any advanced manufacturing facility for any taxable year does not include the portion of the basis of the property that is attributable to QREs. The Treasury Department and the IRS have determined that it would be inconsistent with section 48D(b)(4) to exclude from qualified basis the portion of the basis that is attributable to QREs only when a taxpayer actually claims a rehabilitation credit. Accordingly, the final regulations modify the proposed example to clarify that qualified investment does not include the basis of the property that is attributable to QREs even if the taxpayer does not determine a rehabilitation credit.

Commenters requested that the final regulations clarify whether the section 48D credit has an impact on any other credits established by the Code. The Treasury Department and the IRS note that section 48D(b)(4) provides a special rule for coordination with the rehabilitation credit but does not provide any special rules to coordinate section 48D with other credits established by the Code. Additionally, the Code includes numerous tax credits. Addressing the impact of the section 48D credit on every other credit established by the Code (if any) would require a careful examination of numerous provisions apart from those found in section 48D and the section 48D regulations. For these reasons, addressing whether the section 48D credit has an impact on other credits established by the Code is not necessary for purposes of the final regulations.

III. Comments on and Changes to Proposed § 1.48D–2

A. Basis

Commenters requested clarification on the proper method for determining the portion of basis attributable to the construction, reconstruction, or erection after the date of enactment (August 9, 2022) for property the construction of which began prior to the effective date (January 1, 2023) of section 107 of the CHIPS Act. The commenters requested that the final regulations provide some flexibility to address the difficulties associated with tracking and allocating costs around a date occurring in the middle of the month (August 9, 2022). The commenters also requested that the final regulations allow for the use of any reasonable method and specifically provide that rules similar to the cost allocation rules in §§ 1.48–2(b)(2), 1.48–11(b)(5)(i), and 1.48–12(c)(1) are applicable. One commenter requested that the final regulations clarify that basis can be determined on the principles of section 461 of the Code. The commenter argued that this would clarify, for example, that in cases where a taxpayer has made a payment for construction services prior to August 10, 2022, such payment will be included in the basis of qualified property because the amount is incurred only when the service is performed.

For the avoidance of doubt, no provision of Federal law, including the CHIPS Act or the Code, permits determining any amount of a section 48D credit with respect to any basis in property attributable to construction, reconstruction, or erection that occurred before August 10, 2022 (the first day after the August 9, 2022, date of enactment of the CHIPS Act). However, a rule to address the proper method for allocating basis attributable to the period beginning on the day after the date of enactment (August 10, 2022) and ending on the day immediately before the effective date of section 48D (December 31, 2022) is consistent with the purpose and structure of the statute. Accordingly, the final regulations clarify that for property the construction of which began before January 1, 2023, the portion of basis of such property attributable to construction, reconstruction, or erection after August 9, 2022, the date of enactment of the CHIPS Act, (if any) must be allocated using any reasonable method, including by applying the principles of section 461. The final regulations further clarify that rules similar to the rules in §§ 1.48–2(b)(2), 1.48–11(b)(5)(i), and 1.48–12(c)(1) apply.

Commenters requested that the final regulations provide methods for allocating basis for dual-use property or property comprised of eligible and non-eligible components by square footage, cost, or allow the taxpayer to utilize any reasonable method for allocating cost among properties and time periods. Two commenters requested that the final regulations provide a percentage-based safe harbor rule that allows 100 percent of the basis to qualify if, for example, 80 or 90 percent of the basis is allocable to qualified basis. Commenters also requested that the Treasury Department and the IRS consider whether rules are needed to allocate basis in qualified property in the case of vertically integrated companies that manufacture, for example, ingots, wafers, and semiconductors. Section 48D does not address methods of allocating basis. Section 48D is an investment credit under section 46, and, thus, the investment credit rules for allocating the basis of qualified property apply. Further, the Code includes provisions that control for such purposes (*see, for example, section 1012*). For these reasons, the inclusion of special rules for allocating basis in qualified property as requested by the commenters is not necessary for purposes of the final regulations.

One commenter requested that the final regulations revise the definition of “basis” in proposed § 1.48D–2(c) to allow capitalized costs incurred after the placed in service date of qualified property to qualify for the section 48D credit. Another commenter requested that the final regulations state that the basis of an item of qualified property or properties placed in service during the taxable year is the basis on which the credit is claimed for each year and provide examples illustrating this rule in the context of multi-unit or multi-phase manufacturing projects. The Treasury Department and the IRS agree that a revision is needed and have removed from the final regulations the proposed requirement that basis is determined immediately before the qualified property is placed in service. The final regulations clarify that with respect to any qualified property, the term “basis” has the same meaning as provided in § 1.46–3(c). Thus, if, for the first taxable year in which property is placed in service by the taxpayer, the property meets the definition of qualified property but the basis of the property does not reflect its full cost for the reason that the total amount to be paid or incurred by the taxpayer for the property is indeterminate, a credit will be allowed to the taxpayer for such first

taxable year with respect to so much of the cost as is reflected in the basis of the property as of the close of such taxable year, and a credit will be allowed to the taxpayer for any subsequent taxable year with respect to any additional cost paid or incurred during such subsequent taxable year and reflected in the basis of the property as of the close of such subsequent taxable year. The basis of property determined can include capital expenditures, as defined in section 263 of the Code and §§ 1.263(a)–1 through 1.263(f)–1, with respect to the property. Additionally, § 1.48D–2(h) clarifies that the term “placed in service” has the same meaning as provided in § 1.46–3(d). Because the revision made to the final regulations clarifies that the term “basis” has the same meaning as provided in § 1.46–3(c), it is not necessary to provide specific examples of this rule as applied to qualified property placed in service during a taxable year.

B. Foreign Entity of Concern and Owned By, Controlled By, or Subject to the Jurisdiction or Direction of

Proposed § 1.48D–2 defined the terms “foreign entity of concern” and “owned by, controlled by, or subject to the jurisdiction or direction of” to have the same meaning as those terms in the Commerce Proposed Rule. The Commerce Final Rule does not include a definition of “owned by, controlled by, or subject to the jurisdiction or direction of,” but includes a revised definition of “foreign entity of concern.” The Department of Commerce removed the definition of “owned by, controlled by, or subject to the jurisdiction or direction of” from the Commerce Final Rule to provide greater specificity and incorporated the definition of “owned by, controlled by, or subject to the jurisdiction of” into the definition of “foreign entity of concern” to clarify that the scope of the terms are limited to defining foreign entities of concern. To address the concern that foreign entities of concern could circumvent the restrictions of the rules by establishing entities for which multiple foreign entities of concern each have ownership below the 25 percent threshold, the Commerce Final Rule clarifies that, where at least 25 percent of the person’s outstanding voting interest is held directly or indirectly by any combination of persons who would otherwise be foreign entities of concern themselves, that person is a foreign entity of concern.

As stated in the Background section of this preamble, consistent with the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and

7805(a), the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, have incorporated in the final regulations definitional concepts as determined by the Secretary of Commerce, and contained in the Commerce Final Rule, necessary for the determination of applicable transactions under section 50(a)(3) and (a)(6)(D). Section 48D(c)(1) defines the term “eligible taxpayer,” in part, as any taxpayer that is not a foreign entity of concern (as defined in section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (amending 15 U.S.C. 4651)). Section 50(a)(6)(D)(i) provides rules for when an advanced manufacturing investment credit allowable under section 48D is subject to recapture and defines a foreign entity of concern in the same manner as in section 48D(c)(1). Because section 48D(c)(1) provides rules for when a taxpayer is eligible to claim the advanced manufacturing investment credit, and section 50(a)(6)(D)(i) provides rules for when a taxpayer is no longer eligible for the credit, the statute requires the definition of “foreign entity of concern” in both sections to be synonymous. For these reasons, removing the term “owned by, controlled by, or subject to the jurisdiction or direction of” from the final regulations and defining the term “foreign entity of concern” in the final regulations as having the same meaning as that term as defined in the Commerce Final Rule is consistent with the language and purpose of the statute. The final regulations are revised accordingly.

C. Qualified Investment, Special Rules for Partnerships

Commenters requested a modification to § 1.46–3(f) to permit a partner’s share of the basis of qualified property to be determined independent of the ratio in which the partners divide the general profits of the partnership as required under § 1.46–3(f). One of the commenters noted that section 48D is silent as to how a taxpayer’s basis in qualified property should be allocated in the context of passthrough entities. Section 48D is among the investment credits listed under section 46. *See* section 46(6). The investment credit under section 46 is a business credit under section 38(b)(1). Thus, property with respect to which a section 48D credit is determined is section 38 property.

Section 1.704–1(b)(4)(ii), which requires allocations with respect to the investment credit provided by section

38(b)(1) to be made in accordance with the partners' interests in the partnership, provides that allocations of cost or qualified investment made in accordance with § 1.46–3(f) are deemed to be made in accordance with the partners' interests in the partnership. Pursuant to § 1.46–3(f)(1), in the case of a partnership that owns section 38 property, a partner in a partnership is treated as the taxpayer with respect to the partner's share of the basis of partnership section 38 property. Section 1.46–3(f)(2)(i) provides that a partner's share of basis is determined in accordance with the ratio in which the partners share general profits. Pursuant to § 1.46–3(f)(2)(ii), if all related items of income, gain, loss, and deduction with respect to any item of partnership section 38 property are specially allocated in the same manner as if such special allocation is recognized under section 704(a) and (b) and § 1.704–1(b), then each partner's share of the basis of such item of section 38 property is determined by reference to such special allocation effective for the date on which the property is placed in service, rather than in accordance with the ratio in which the partners share general profits. Thus, § 1.46–3(f), as currently in effect already permits special allocations of a partner's share of the basis of an item of section 38 property independent of the ratio in which the partners divide the general profits of the partnership if all requirements under § 1.46–3(f)(2)(ii) are met. Also, modifying the regulations under § 1.46–3(f) to allow for allocations beyond what is already permitted under § 1.46–3(f), including § 1.46–3(f)(2)(ii), would have broad implications beyond the application of section 48D, and for that reason, such modifications would not be appropriate to include in the final regulations. For the foregoing reasons, the final regulations do not incorporate the commenters' recommendations regarding § 1.46–3(f).

D. Qualified Progress Expenditures Election

One commenter requested that the final regulations clarify whether an election for qualified progress expenditure can be made for expenses paid or incurred after August 9, 2022, through December 31, 2022. The Treasury Department and the IRS have determined that no further clarification is necessary concerning the availability of a progress expenditures election. Section 48D(b)(5) applies rules similar to the progress expenditures rules of section 46(c)(4) and (d) as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990.

Section 107(f)(1) of the CHIPS Act provides that the section 48D credit can be claimed for property placed in service after December 31, 2022, and for any property the construction of which began prior to January 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction or erection after the date of enactment (August 9, 2022). Consistent with the statute, § 1.48D–2(j)(3)(i) of the final regulations provides that the taxpayer may elect, as provided in § 1.46–5, which provides the rules governing qualified progress expenditures, to increase the qualified investment with respect to an advanced manufacturing facility of an eligible taxpayer for the taxable year by any qualified progress expenditures made after August 9, 2022. Accordingly, an election for qualified progress expenditures can be made for expenses paid or incurred after August 9, 2022, and on or before December 31, 2022. In addition, the final regulations under § 1.48D–2(j)(3)(ii) clarify that, if progress expenditure property is being constructed by or for a partnership or S corporation, the rules of § 1.46–5(o)(1) and (p) do not prohibit a partnership or S corporation from making a qualified progress expenditure election under § 1.46–5 if such partnership or S corporation intends to make an elective payment election under section 48D(d) and § 1.48D–6 with respect to a section 48D credit determined with respect to such qualified property.

One commenter requested that the final regulations or other guidance provide guidance on the definitions of “self-constructed” versus “non-self-constructed property” and “integrated unit” for purposes of determining the construction period under § 1.46–5. Pursuant to § 1.46–5(d), whether a property, including qualified property under section 48D(b)(2) and the section 48D regulations, is progress expenditure property is determined based on the facts known at the close of the first taxable year in which construction begins, or if later, at the close of the first taxable year to which a progress expenditures election is made. Whether property is “self-constructed” versus “non-self-constructed property” or an “integrated unit” pursuant to § 1.46–5(k), (l) and (e)(3), respectively, is also a factual determination. Additional guidance on the definitions of “self-constructed” versus “non-self-constructed property” and “integrated unit,” would inject significant complexity into the final regulations and likely cause additional uncertainty regarding the scope of those terms. Such

guidance would have implications for any investment tax credit, including, for example, the rehabilitation credit under section 47 and the energy credit under section 48, for which a taxpayer can make a qualified progress expenditures election. For these reasons, such guidance is not appropriate to be included in the final regulations. Accordingly, the final regulations do not address the modifications requested by the commenter.

One commenter requested that the final regulations provide that the percentage of completion limitation for non-self-constructed property under § 1.46–5(j)(6) does not apply or that it be amended to allow for a greater percentage (up to 66 percent) of completion for semiconductor tooling equipment. The commenter argued that some tooling equipment manufacturers require a payment of as much as 90 percent of the total contract price in the first year the order is placed. Section 1.46–5(j)(6)(i) provides: (1) payments made in any taxable year may be considered qualified progress expenditures for non-self-constructed property only to the extent they are attributable to progress made in construction (percentage of completion limitation); (2) progress will generally be measured in terms of the manufacturer's incurred cost as a fraction of the anticipated cost (as adjusted from year to year); and (3) progress is presumed to occur not more rapidly than ratably over the normal construction period but the taxpayer may rebut the presumption by clear and convincing evidence of a greater percentage of completion. Section 1.46–5(j)(6)(i) provides sufficient flexibility for taxpayers that intend to claim a section 48D credit for qualified progress expenditures. The commenter requested a modification to the percentage of completion limitation for non-self-constructed property under § 1.46–5(j)(6) for semiconductor tooling equipment only; however, such modification would require a careful examination of any implications for all other investment tax credits for which a taxpayer can make a qualified progress expenditures election, including, for example, the rehabilitation credit under section 47 and the energy credit under section 48. For these reasons, the final regulations do not adopt the commenter's recommendations.

E. Definitions of Semiconductor and Semiconductor Manufacturing

1. In General

Commenters requested that the final regulations expand the definition of

“semiconductor” and “semiconductor manufacturing” to encompass additional products, substances, and processes. The commenters requested that, among other materials and substances, wafers, diamond wafer substrates, ingots, boules, high-purity silicon, silicon carbide, polysilicon, semiconductive substances, III–V compounds, ceramics, lithographic materials, specialty adhesives and cleaners, metals and dielectrics, and quantum electronics be included in the definition of “semiconductor.” Commenters also requested that the final regulations modify the definition of “semiconductor manufacturing” if the definition of “semiconductor” is expanded to include additional products and substances.

Consistent with the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805(a), the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, have incorporated in the final regulations definitional concepts that are consistent with the Commerce Final Rule and necessary for the determination of both eligibility for the section 48D credit and applicable transactions under section 50(a)(3) and (a)(6)(D).

Accordingly, the final regulations provide that a taxpayer may claim a section 48D credit for qualified property placed in service as part of an advanced manufacturing facility the primary purpose of which is semiconductor manufacturing. The final regulations define “semiconductor manufacturing” as semiconductor wafer production, semiconductor fabrication, and semiconductor packaging.

The remainder of this section III.E of this Summary of Comments and Explanation of Revisions discusses the definitions adopted in the final regulations of the terms “semiconductors,” “semiconductor manufacturing,” “semiconductor wafer production,” “semiconductor fabrication,” and “semiconductor packaging.”

2. Semiconductors

The term “semiconductor” is among those definitional concepts necessary for the determination of whether a transaction is a significant transaction involving the material expansion of *semiconductor* manufacturing capacity in a foreign country of concern (*emphasis added*). Because the term “semiconductor” is also a definitional concept necessary for the determination of when a taxpayer is eligible to claim the advanced manufacturing investment

credit, the statute requires the definition of “semiconductor” for purposes of sections 48D and 50(a)(6)(D)(i) to be synonymous. Moreover, failing to define the term “semiconductor” for purposes of the section 48D regulations would contravene the statutory directive under section 50(a)(6)(D)(i) to define what is a “significant transaction” for the expansion of semiconductor manufacturing capacity other than with regard to certain “legacy semiconductors.” In addition, section 9901(9) of the William M. (Mac) Thornberry National Defense Authorization Act, as redesignated by section 103(a)(2) of the CHIPS Act, for Fiscal Year 2021 (15 U.S.C. 4651), provides that the term “semiconductor” has the same meaning given that term by the Secretary of Commerce. For these reasons, the Treasury Department and the IRS decline to expand the definition of “semiconductor” to include additional products and substances beyond what is provided in the Commerce Final Rule, as suggested by the commenters.

Consistent with the definition of “semiconductor” in the Commerce Final Rule (15 CFR 231.115), and pursuant to the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805(a), the final regulations provide that a semiconductor is an integrated electronic device or system most commonly manufactured using materials such as, but not limited to, silicon, silicon carbide, or III–V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include, but are not limited to, analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.

3. Definition of Semiconductor Manufacturing

One commenter requested that the final regulations expand the definition of “semiconductor manufacturing” to cover a broader space (aerospace) semiconductor manufacturing process. As noted in section IV.E of this Summary of Comments and Explanation of Revisions, section 48D is silent on the topic of semiconductor manufacturing in space or whether semiconductor manufacturing can occur in space. Whether semiconductor manufacturing can occur in space would require a careful examination of all relevant facts and circumstances, any applicable Code provisions and Federal income tax principles apart from those found in section 48D and the section 48D

regulations. As such, changing the definition of semiconductor manufacturing to include an aerospace semiconductor manufacturing process, as requested by the commenter, is beyond the scope of section 48D and the section 48D regulations. Accordingly, the final regulations do not adopt rules to address semiconductor manufacturing in space.

4. Semiconductor Wafer Production

As previously discussed, commenters requested that the final regulations modify the definition of “semiconductor manufacturing” (and synonymously, the term “manufacturing of semiconductors”) if the definition of “semiconductor” is expanded to include additional products and substances. Although the final regulations do not expand the definition of “semiconductor” beyond what is provided in the Commerce Final Rule, the final regulations clarify the definition of “semiconductor manufacturing” by specifying that it includes “semiconductor wafer production” but not further upstream production processes, pursuant to the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805(a). The clarification that “semiconductor manufacturing” includes “semiconductor wafer production” is consistent with the definition of “semiconductor manufacturing” in the Commerce Final Rule (15 CFR 231.116) issued pursuant to section 103(b) of the CHIPS Act (15 U.S.C. 4652), which provides that, for purposes of the Expansion Clawback (described later), the term “semiconductor manufacturing” has the same meaning given that term by the Secretary of Commerce, in consultation with the Secretary of Defense and the Director of National Intelligence.

However, the production of additional products and substances requested by commenters to be included in “semiconductor manufacturing” would not be appropriate as those are materials that are consumed or substantially transformed during the semiconductor manufacturing processes, and not included in the definition of “semiconductor manufacturing” in the Commerce Final Rule. For these reasons, the final regulations clarify that the definition of the term “manufacturing of semiconductors” (and synonymously “semiconductor manufacturing”) includes semiconductor wafer production but excludes the production of precursor materials such as polysilicon from the scope of the definition.

The final regulations define the term “semiconductor wafer production” to include “the processes of *growing single-crystal ingots and boules*, wafer slicing, *etching and* polishing, *bonding*, cleaning, epitaxial deposition, and metrology” (emphasis added). The Commerce Final Rule defines the term “semiconductor wafer production” to include the processes of wafer slicing, polishing, cleaning, epitaxial deposition, and metrology. The final regulations differ from the Commerce Final Rule by including “growing single-crystal ingots and boules,” “etching,” and “bonding” in the definition of “semiconductor wafer production” because the purposes of the relevant provisions in the Commerce Final Rule and those in the section 48D regulations differ.

The CHIPS Act established the section 48D credit for the purpose of incentivizing the manufacturing of semiconductors and semiconductor manufacturing equipment within the United States and amended section 50(a) to provide for recapture of the section 48D credit if an applicable taxpayer engages in an applicable transaction. Thus, the section 48D regulations include definitions and rules that apply for determining who is an eligible taxpayer, what qualifies as qualified property or an advanced manufacturing facility, and whether the beginning of construction requirement is met.

However, the purposes of relevant definitions and rules in the section 48D regulations differ from the purpose of the Commerce Final Rule, which relates to implementing the CHIPS Act’s “Expansion Clawback.” As a matter of United States national security interests, a funding recipient is required by statute to enter into an agreement with the Department of Commerce restricting engagement by the funding recipient or its affiliates in any significant transaction involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern. Failure by a funding recipient (or its affiliate) to comply with the restriction on semiconductor manufacturing capacity expansion in foreign countries of concern may cause the Expansion Clawback to apply, resulting in recovery of the full amount of Federal financial assistance provided to the funding recipient.

The differences between the meaning of “semiconductor wafer production” in the Commerce Final Rule and in the final regulations reflects the difference between the purposes of the two rules as intended by Congress. The Expansion

Clawback prohibits funding recipients from knowingly engaging in a significant transaction, and the section 48D credit incentivizes taxpayers to engage in the manufacturing of semiconductors and semiconductor manufacturing equipment in the United States, provided the applicable taxpayer does not also engage in an applicable transaction. For these reasons, the Treasury Department and the IRS, after consultation with the Department of Commerce and the Department of Defense pursuant to the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805(a), have determined that a clarification is necessary to confirm that for purposes of the section 48D credit, “semiconductor wafer production” includes growing single-crystal ingots and boules, wafer slicing, etching and polishing, bonding, cleaning, epitaxial deposition, and metrology. The Treasury Department and the IRS note that the term “semiconductor wafer production” in the final regulations also includes growing single-crystal ingots and boules, wafer slicing, etching and polishing, bonding, cleaning, epitaxial deposition, and metrology as applied to the production of solar wafers. The Treasury Department and the IRS note this after coordination with the Department of Commerce and the Department of Defense due to specific supply chain and national security considerations regarding the production of solar wafers not present in the case of other related products.

5. Semiconductor Fabrication

The final regulations provide that the term “semiconductor fabrication” includes “the process of forming devices such as transistors, poly capacitors, non-metal resistors, and diodes, *as well as interconnects between such devices*, on a wafer of semiconductor material” (emphasis added). The Commerce Final Rule defines the term “semiconductor fabrication” to include the process of forming devices such as transistors, poly capacitors, non-metal resistors, and diodes on a wafer of semiconductor material. The final regulations differ from the Commerce final rule by including “interconnects between such devices.”

The difference between the definition of “semiconductor fabrication” in the Commerce Final Rule and the final regulations with respect to “interconnects between such devices” reflects the difference between the purpose of the section 48D regulations and the Expansion Clawback. As explained in section III.E.4 of this

Summary of Comments and Explanation of Revisions, the Expansion Clawback prohibits funding recipients from knowingly engaging in a significant transaction, whereas the section 48D credit incentivizes taxpayers to engage in the manufacturing of semiconductors and semiconductor manufacturing equipment in the United States, provided the applicable taxpayer does not also engage in an applicable transaction. For these reasons, the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, and pursuant to the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805(a), have determined that a clarification is necessary to confirm that for purposes of the section 48D credit, “semiconductor fabrication” includes the process of forming interconnects between such devices.

6. Semiconductor Packaging

Several commenters requested that the definition of “semiconductor manufacturing” be revised to include assembly and testing within all stages of packaging. Commenters also requested that the final regulations provide definitions of the terms “assembly” and “testing.” As previously noted, consistent with the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805(a), the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, have incorporated in the final regulations definitional concepts as determined by the Secretary of Commerce, and contained in the Commerce Final Rule necessary for the determination of applicable transactions under section 50(a)(3) and (a)(6)(D). The preamble to the Commerce Proposed Rule clarifies that “semiconductor manufacturing” includes both front-end fabrication as well as back-end manufacturing including assembly, testing, and packaging of semiconductors. Accordingly, revising the definition of “semiconductor manufacturing” to include “assembly” and “testing” and providing definitions of “assembly” and “testing” is consistent with the purpose of the section 48D credit to incentivize the manufacture of semiconductors within the United States. Accordingly, § 1.48D–2(n) of the final regulations provides that semiconductor packaging includes assembly and testing. Section 1.48D–2(n)(4) and (5) of the final regulations provide definitions of “assembly” and “testing,” respectively.

One commenter requested that the final regulations clarify that the term

“semiconductor packaging” include the manufacturing of IC-substrates. As stated in the Background section of this preamble, consistent with the statutory authority provided under sections 50(a)(3) and (a)(6)(D)(i) and 7805, the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, have incorporated in the final regulations definitional concepts as determined by the Secretary of Commerce, and contained in the Commerce Final Rule necessary for the determination of applicable transactions under section 50(a)(3) and (a)(6)(D). Consistent with the Commerce Final Rule, the final regulations define the term “semiconductor packaging” as the process of enclosing a semiconductor in a protective container (package) and providing external connectivity for the assembled integrated circuit. The manufacturing of a substrate used during the semiconductor packaging process is not part of “semiconductor packaging” as defined under the final regulations. For the foregoing reason, the final regulations do not adopt the commenter’s recommendation.

F. Definitions of Semiconductor Manufacturing Equipment, Subsystems, and Manufacturing Semiconductor Manufacturing Equipment

Commenters requested that the final regulations modify the definition of “semiconductor manufacturing equipment” to include direct and indirect materials integral to the semiconductor manufacturing equipment, such as, electronic grade isopropyl alcohol, precision bearings, industrial gases including high purity and general purpose nitrogen, chemicals such as fluoropolymers peroxides and fluorogases, lens and mirrors, and components. Commenters requested that the final regulations define the term “subsystem” as highly engineered and specialty equipment that is either sold directly to, or primarily produced for, a semiconductor fabricator or a third-party equipment manufacturer.

Among other requirements, section 48D(b)(2) and § 1.48D–3(c) (referencing § 1.48–1(c) and (d)) require that property be tangible depreciable property, for example, production machinery, to meet the definition of qualified property. Gases, chemicals, and materials, such as IC-substrates and diamond wafer substrates, and semiconductive substances, that are consumed, utilized, or substantially transformed in a similar manner during the manufacturing process does not meet the threshold requirement of section 48D(b)(2) and § 1.48D–3(c) because they are not

tangible depreciable property for purposes of the section 48D credit.

For the foregoing reason, the Treasury Department and the IRS decline to adopt the commenters’ requests to modify the definition of “semiconductor manufacturing equipment” to include such materials. The final regulations clarify that “semiconductor manufacturing equipment” means the highly engineered specialized equipment used in the manufacturing of semiconductors as defined in § 1.48D–2(g) and the subsystems that enable, or are incorporated into, the manufacturing equipment. This definition will eliminate uncertainty in determining whether property is semiconductor manufacturing equipment, as opposed to consumable materials, chemicals, or gases, that do not meet the definition of semiconductor manufacturing equipment.

The Treasury Department and the IRS decline to adopt the commenters’ recommendations to define the term “subsystem” as highly engineered and specialty equipment that is either sold directly to, or is primarily produced for, a semiconductor fabricator or a third-party equipment manufacturer. Providing such a definition would inject significant complexity into the final regulations. Consistent with the definition of semiconductor manufacturing equipment in the proposed regulations, § 1.48D–2(o) provides that the term “semiconductor manufacturing equipment” includes the subsystems that enable, or are incorporated into, the manufacturing equipment. Additionally, property that may be considered a subsystem must also meet the requirements of section 48D and the section 48D regulations.

Commenters also requested that the list of examples of “semiconductor manufacturing equipment” be expanded to include any property that is considered property integral to the operation of an advanced manufacturing facility under proposed § 1.48D–3(f)(1). The Treasury Department and the IRS have determined that such a rule is inconsistent with the purpose and structure of the statute, which clearly contemplates that not all property integral to the operation of an advanced manufacturing facility be treated as semiconductor manufacturing equipment. Although certain property, such as a gas handling system, may be property integral to the operation of an advanced manufacturing facility under section 48D(b)(2)(A)(iv) and proposed § 1.48D–3(f), that property does not, by application of the standard in section 48D(b)(2)(A)(iv) and proposed § 1.48D–3(f), meet the definition of

semiconductor manufacturing equipment under § 1.48D–2(o) of the final regulations.

Commenters requested that the final regulations clarify that the list of examples of semiconductor manufacturing equipment is non-exclusive and provide an illustrative list of subsystems to include, items such as specialty glass lenses, photomasks, lenses and mirrors like those made of calcium fluoride or high-purity fused silica, lens assemblies for wafer defect inspection following wafer printing, light sources or other major components of photolithography systems, and advanced ceramic products. The Treasury Department and the IRS have determined that such clarifications are appropriate for defining “semiconductor manufacturing equipment.”

Accordingly, the final regulations clarify that the list of examples of semiconductor manufacturing equipment and subsystems is non-exclusive and includes additional examples of property that may qualify as semiconductor manufacturing equipment and subsystems. The Treasury Department and the IRS again note that property that may be considered a subsystem must also meet the requirements of section 48D and the section 48D regulations.

Commenters further requested that the final regulations clarify that a component, part or subsystem may be considered semiconductor manufacturing equipment on a case-by-case basis, and provide factors that are persuasive, including industry definitions, CHIPS Act funding, complexity of part, or other United States Government Agency categorizations that define it as semiconductor equipment. As stated in the Background section of this preamble, consistent with the authority granted by sections 50(a)(3) and (a)(6)(D)(i) and 7805(a), the Treasury Department and the IRS, in coordination with the Department of Commerce and the Department of Defense, have incorporated in the final regulations definitional concepts as determined by the Secretary of Commerce, and contained in the Commerce Final Rule necessary for the determination of applicable transactions under section 50(a)(3) and (a)(6)(D). For this reason, the Treasury Department and the IRS have determined that incorporating definitions from other United States Government agencies that define semiconductor equipment for other purposes would not be appropriate. The Treasury Department and the IRS have further determined that including a case-by-case facts and circumstances

rule as suggested by the commenters would inject significant complexity into the final regulations and likely cause additional uncertainty regarding the scope of the term “semiconductor manufacturing equipment” due to its inherently factual nature. As a result, the final regulations do not incorporate the commenters’ recommendations.

The Treasury Department and the IRS note that proposed § 1.48D–2(n) would define “manufacturing semiconductor manufacturing equipment” as the physical production of semiconductor manufacturing equipment in a manufacturing facility. As further described in section V.A. of this Summary of Comments and Explanation of Revisions, the final regulations modify the proposed definition of “advanced manufacturing facility” by removing the requirement that such a facility manufacture “finished” semiconductor manufacturing equipment. Consistent with the modification, the final regulations define the term “manufacturing of semiconductor manufacturing equipment” to require that that such semiconductor manufacturing equipment be used by an advanced manufacturing facility engaged in the manufacturing of semiconductors as defined in § 1.48D–2(g) of the final regulations.

IV. Comments on and Changes to Proposed § 1.48D–3

A. Part of an Advanced Manufacturing Facility

Commenters requested clarification that a taxpayer’s ownership of an advanced manufacturing facility is not a prerequisite for claiming the section 48D credit when a taxpayer places in service qualified property that is co-located on an advanced manufacturing facility and otherwise meets the requirements of section 48D and the final regulations. One commenter requested that the final regulations provide that property that is physically located or co-located on an advanced manufacturing facility and integral to the operation of the advanced manufacturing facility be considered part of the advanced manufacturing facility. The Treasury Department and the IRS agree that neither section 48D(b)(1) and (2), nor any other provision under section 48D, require a taxpayer to own the advanced manufacturing facility as a prerequisite to determining a section 48D credit. Section 48D(b)(1) and (2) mandate that, among other requirements, property be placed in service as part of, and, integral to the operation of an advanced

manufacturing facility to be “qualified property” for purposes of the section 48D credit. Therefore, the final regulations include a definition of “part of an advanced manufacturing facility” to clarify that property is part of the advanced manufacturing facility if the property is physically located or co-located either (1) at the advanced manufacturing facility, or (2) on a contiguous piece of land to the advanced manufacturing facility. The final regulations clarify that parcels or tracts of land are considered contiguous if they possess common boundaries and would be contiguous but for the interposition of a road, street, railroad, public utility, stream or similar property. Generally, property that is not physically located or co-located at the advanced manufacturing facility or on a piece of land contiguous to the advanced manufacturing facility is not part of an advanced manufacturing facility.

The Treasury Department and the IRS are aware that certain properties, for example, a water or wastewater treatment plant, may not be physically located or co-located at an advanced manufacturing facility or on a contiguous piece of land to the advanced manufacturing facility, but could be integral to the operation of the advanced manufacturing facility. For this reason, a rule allowing such properties in certain situations to be considered part of an advanced manufacturing facility is appropriate for purposes of the section 48D credit. Accordingly, the final regulations provide that property that is not located or co-located at an advanced manufacturing facility or on a contiguous piece of land to the advanced manufacturing facility may be considered part of an advanced manufacturing facility if the property is (1) owned by the same taxpayer as the entire advanced manufacturing facility, (2) connected to the advanced manufacturing facility (for example, via pipeline), and (3) the sole purpose, function, and output of the property is dedicated to the operation of the advanced manufacturing facility. However, such property must also meet the requirements of section 48D and the section 48D regulations. The final regulations include two examples to illustrate the application of section 48D(b) and § 1.48D–3(f).

B. Buildings and Offices

Commenters requested that the final regulations expand the definition of “qualified property” to include an existing building that is purchased but not reconditioned or re-built by the

taxpayer. It would be inconsistent with the statute to allow a building that is purchased but not reconstructed by the taxpayer to be “qualified property” for purposes of the section 48D credit. Section 48D(b)(2)(A)(iii)(I) provides that the term “qualified property” means property that is, among meeting other requirements, “constructed, reconstructed, or erected by the taxpayer.” Therefore, the final regulations retain the rule set forth in proposed § 1.48D–3(b)(1).

Commenters requested that the final regulations remove “offices” from the exception to the definition of tangible depreciable property in § 1.48D–3(c)(2) in order to allow certain office space within an advanced manufacturing facility to meet the definition of tangible depreciable property in § 1.48D–3(c)(1). It would be inconsistent with the statute to omit “offices” from the exception to the definition of tangible depreciable property, but further clarification is necessary concerning the meaning of the term “office”. Section 48D(b)(2)(B)(ii) excludes from the definition of “qualified property” “a building or portion of a building used for offices, administrative services, or other functions unrelated to manufacturing.” Accordingly, the final regulations clarify that the term “tangible depreciable property” does not include a building and its structural components used for offices. But, in response to the comments received, the final regulations also provide a list of certain buildings or portions of a building within an advanced manufacturing facility that are considered related to manufacturing and not considered offices. However, whether a particular building or portion of a building is used as an office, for administrative services, or is unrelated to manufacturing is a factual determination.

C. Certain Leasing Transactions and Original Use

A commenter requested that the final regulations clarify that a lessor election under § 1.48–4 to treat the lessee as having acquired investment credit property is permitted with respect to the section 48D credit. The commenter also requested that the final regulations address whether a lessor or lessee that purchases a previously leased advanced manufacturing facility and subsequently reconditions or rebuilds the facility is eligible to claim a section 48D credit. The Treasury Department and the IRS agree with the commenter that a lessor election under § 1.48–4 to treat the lessee as having acquired investment credit property is permitted by operation of the statute. Section 48D is

an investment credit under section 46. Section 50(d)(5) provides that, for purposes of computing the investment credit, rules similar to the rules of former section 48(d) (relating to certain leased property) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388 (November 5, 1990)) apply. Section 1.48–4 provides the regulatory requirements for the time and manner for making an election to treat the lessee as having purchased the property for purpose of the credit allowed and the regulatory requirements, including for original use, that must be met and are applicable for purposes of the election. The Treasury Department and the IRS decline to address specific examples of leasing transactions in the final regulations and note that the investment credit recapture provisions under section 50(a) and regulations, including §§ 1.47–1 through 1.47–3 apply for purposes of the section 48D credit.

Commenters also requested that the definition of “original use” in proposed § 1.48D–3(e) be modified in the final regulations to include acquired property that is reconditioned or rebuilt by a different taxpayer. Section 48D(b)(2)(A)(iii)(I) and (II) provide that “qualified property” includes property that is constructed, reconstructed, or erected by the taxpayer, or acquired by the taxpayer if the “original use” of such property begins with the taxpayer. Thus, the taxpayer must reconstruct or rebuild a property to meet the “original use” requirement under section 48D(b)(2)(A)(iii). Accordingly, the Treasury Department and the IRS decline to adopt this recommendation.

D. Property Integral to the Operation of an Advanced Manufacturing Facility

One commenter requested that the sentence in proposed § 1.48D–3(f)(1) that states, “Materials, supplies, and other inventoriable items of property that are transformed into a finished semiconductor or into a finished unit of semiconductor manufacturing equipment are not considered property integral to the operation of manufacturing semiconductors or semiconductor manufacturing equipment” be modified to provide that such materials are integral to the operation of an advanced manufacturing facility. The Treasury Department and the IRS decline to adopt this recommendation. As noted in section III.I. of this Summary of Comments and Explanation of Revisions, among other requirements, section 48D(b)(2) and § 1.48D–3(c) (referencing § 1.48–1(c) and (d)) require that property be tangible

depreciable property, for example, production machinery, to meet the definition of qualified property. Gases, chemicals, and materials, such as diamond wafer substrates, and other semiconductive substances, that are consumed, utilized, or substantially transformed during the manufacturing process, or any other inventoriable items of property do not meet the threshold requirement of section 48D(b)(2) and § 1.48D–3(c) to be “qualified property” because they are not tangible depreciable property for purposes of the section 48D credit. Thus, such property would not be property “integral to the operation of an advanced manufacturing facility” under the statute.

Another commenter requested that the final regulations clarify that the term “transformed” in proposed § 1.48D–3(f)(1) does not refer to the normal degradation of components of semiconductor manufacturing equipment. However, a clarification is appropriate for establishing whether property is integral to the operation of an advanced manufacturing facility. Accordingly, § 1.48D–3(g)(1) of the final regulations clarifies that the term “transformed” does not include the normal degradation of components of semiconductor manufacturing equipment.

The final regulations include a special rule for purposes of establishing whether property is integral to the operation of a vertically integrated manufacturing facility. As discussed in section III.E. of this Summary of Comments and Explanation of Revisions, the final regulations clarify that the term “semiconductor manufacturing” includes semiconductor packaging, semiconductor fabrication, and semiconductor wafer production but excludes manufacturing processes related to precursor materials such as polysilicon. Consistent with this modification, the final regulations provide that, if an advanced manufacturing facility that is engaged in the manufacturing of semiconductors within the meaning of § 1.48D–2 also conducts vertically integrated activities (for example, producing raw materials and manufacturing ingots, wafers, and semiconductors), then property integral to the operation of such an advanced manufacturing facility includes only the property used in the manufacturing of semiconductors within the meaning of § 1.48D–2.

Commenters requested that examples of property that would normally be integral to operation of an advanced manufacturing facility in proposed § 1.48D–3(f)(1) be modified to reflect

any modifications to the definitions of “semiconductor” and “semiconductor manufacturing equipment” in the final regulations. Commenters also requested that the final regulations include additions to the list of specific property under § 1.48D–3(f)(1) to provide certainty to taxpayers. The commenters requested that the list include, property such as electricity distribution equipment, industrial automation and control equipment, communications devices, lighting products, water management, conservation, water treatment equipment, materials, and technologies, and tooling equipment. The Treasury Department and the IRS have determined that adding to the list of specified property that would “normally be integral to the operation of an advanced manufacturing facility” consistent with the modification to the definitions of “semiconductor manufacturing” and “semiconductor manufacturing equipment” under § 1.48D–2(n) and (o) of the final regulations is appropriate for determining whether property is “integral to the operation of an advanced manufacturing facility.” Accordingly, § 1.48D–3(g)(3) of the final regulations includes additional examples of such property.

One commenter requested that proposed § 1.48D–3(f)(2) be modified to treat research facilities that do not manufacture any type of semiconductor or semiconductor manufacturing equipment to qualify as integral to the operation of an advanced manufacturing facility. The commenter further stated that the restriction in § 1.48D–3(f)(2) of the March 2023 proposed regulations exceeds the statutory exclusions in section 48D(b)(2)(B)(ii) for a building or portion of a building used for offices, administrative services, or other functions unrelated to manufacturing. The statute is silent concerning the treatment of research facilities, but does require, pursuant to section 48D(b)(2)(A)(iv), that property be integral to the operation of an “advanced manufacturing facility” to meet the definition of “qualified property.” As previously noted in the Background section of this preamble, the March 2023 proposed regulations primarily applied long-established credit mechanics and procedures common to all investment tax credits previously set forth in regulations and subregulatory guidance. Those long-established mechanics and procedures, including those set forth in § 1.48–1 generally require that a research facility be used “in connection” with the qualifying activity to be considered used

as integral part of the activity. Section 48D(b)(3) defines an “advanced manufacturing facility” as a “facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment.” Under both the March 2023 proposed regulations and the final regulations, facilities built for pre-pilot production lines and the manufacture of prototypes would be qualified property integral to the operation of an advanced manufacturing facility. Based on the foregoing, a research facility that does not manufacture semiconductors or semiconductor manufacturing equipment is not used “in connection” with the manufacturing of semiconductors or semiconductor manufacturing equipment. For these reasons, the final regulations do not adopt the commenter’s recommendation.

E. Semiconductor Manufacturing in Space

One commenter requested that the final regulations clarify that section 48D directly contemplates semiconductor manufacturing work in space and explicitly confirm that qualifying advanced manufacturing activity can occur in space, and on a low-earth orbiter, in particular. More specifically, the commenter requested that the final regulations: (1) provide an exception to the definition of buildings and structural components unrelated to manufacturing for functions that are critical for human habitation in space; and (2) expand the examples of property integral to the operations of an advanced manufacturing facility to include space delivery vehicles, as all of the examples currently describe either the facility itself or related infrastructure for land-based manufacturing (for example, docks, railroad tracks, and bridges).

Section 48D does not expressly address semiconductor manufacturing in space, or whether a “qualifying advanced manufacturing activity” can occur in space, and on a low-earth orbiter, in particular. Section 48D is among the investment credits under section 46. Section 50(b)(1)(A) makes ineligible for the investment credit property that is used predominantly outside the United States. However, section 50(b)(1)(B) provides an exception for property described in section 168(g)(4). Section 168(g)(4)(L) includes an exception for any satellite (not described in section 168(g)(4)(H), which applies to communication satellites) or other spacecraft (or any interest therein) held by a United States person if such satellite or other

spacecraft was launched from within the United States. Whether a low-earth orbiter or property placed in service on a low-earth orbiter is described in section 168(g)(4)(L) would require a careful examination of all relevant facts and circumstances, any applicable Code sections and Federal income tax principles apart from those found in section 48D and the section 48D regulations. Whether “buildings” or structural components that are critical for human habitation in space are included among the exception for a building or portion of a building used for offices administrative services, or other functions unrelated to manufacturing pursuant to section 48D(b)(2)(B)(ii), also would require a careful examination of all relevant facts and circumstances, any applicable Code sections, and Federal income tax principles apart from those found in section 48D and the section 48D regulations. Similarly, whether property integral to the operation of an advanced manufacturing facility can include space delivery vehicles requires a careful examination of all relevant facts and circumstances. For these reasons, the issues addressed by the commenter are beyond the scope of the final regulations. Accordingly, the final regulations do not adopt rules to address semiconductor manufacturing in space.

V. Comments on and Changes to Proposed § 1.48D–4

A. Definition of Advanced Manufacturing Facility

Section 1.48D–4(b) of the March 2023 proposed regulations would have provided that the term “advanced manufacturing facility” means a facility of an eligible taxpayer for which the primary purpose is the manufacturing of finished semiconductors or the manufacturing of finished semiconductor manufacturing equipment. Commenters requested that the final regulations omit the term “finished” from the definition of “advanced manufacturing facility,” or, define the term “finished” if it is retained in the final regulations. Commenters also requested that conforming changes be made to the definition of “advanced manufacturing facility” if the definitions of “semiconductor,” “semiconductor manufacturing equipment,” or “subsystems” are modified by the final regulations.

The Treasury Department and the IRS agree with the commenters that the term “finished” should be removed from the definition of “advanced manufacturing

facility” in the final regulations to reflect industry practice and the modifications to the definitions of “semiconductor manufacturing” and “semiconductor manufacturing equipment” under § 1.48D–2(n) and (o) of the final regulations. Accordingly, the definition of “advanced manufacturing facility” is revised in the final regulations by removing the term “finished.” Consistent with the revision to the definition of “advanced manufacturing facility,” the term “finished” is also removed from § 1.48D–4(b) and (c)(1) of the final regulations, for purposes of determining whether the primary purpose of a facility is the manufacturing of semiconductors or semiconductor manufacturing equipment.

Commenters requested that the definition of an advanced manufacturing facility be modified to ensure that industrial gas and other equipment qualifies when co-located on an advanced manufacturing facility, and, similarly, clarify what constitutes an advanced manufacturing facility when multiple taxpayers place in service qualified property at the same facility. Commenters also requested that the final regulations define the term “facility” as a reasonably identifiable space, an amenity, a piece of equipment, or an assembly line that can be distinguished from an entire campus or building where multiple activities are performed and would allow for bifurcation of manufacturing campuses or within buildings where certain facilities may be leveraging the section 48D credit while other facilities may be leveraging a different tax incentive. One commenter requested that the final regulations define an advanced manufacturing facility consistent with the definition of qualified property integral to the operation of an advanced manufacturing facility in proposed § 1.48D–3(f). Another commenter requested that the final regulations provide that the definition of an advanced manufacturing facility include design facilities that are related to the semiconductor manufacturing process.

The Treasury Department and the IRS decline to adopt these recommendations by further modifying the definition of an “advanced manufacturing facility” or defining “facility” in the final regulations. Section 48D(b)(3) and § 1.48D–4(b) of the final regulations define an advanced manufacturing facility as a facility for which the primary purpose is the manufacturing of semiconductors or the manufacturing of semiconductor manufacturing equipment within the meaning of § 1.48D–2. Section 1.48D–2 defines the

terms semiconductor, semiconductor manufacturing, semiconductor manufacturing equipment, manufacturing of semiconductors, and manufacturing of semiconductor manufacturing equipment. Taken together, the statutory and regulatory provisions define what constitutes an advanced manufacturing facility for purposes of the section 48D credit. For these reasons, the final regulations do not include a separate definition of “facility” as requested by the commenters. The treatment of co-located property is addressed in section IV.A of this Summary of Comments and Explanation of Revisions.

B. Primary Purpose

Commenters requested that the final regulations include a minimum threshold that would satisfy the “primary purpose” requirement. In proposed § 1.48D–4(c)(3)(i) (Example 1), a taxpayer manufactures semiconductor manufacturing equipment that represents approximately 75 percent of the potential output of the taxpayer’s facility by cost to produce such equipment. Section 1.48D–4(c)(3)(i) (Example 1) shows that the taxpayer satisfied the primary purpose test in proposed § 1.48D–4(c). Proposed § 1.48D–4(c)(3)(ii) (Example 2) reaches the same conclusion when the taxpayer manufactures certain microscopes for a semiconductor manufacturing facility and such equipment represents approximately 75 percent of the potential output (by cost) of the taxpayer’s facility. Commenters requested that the final regulations state the minimum threshold that would satisfy the primary purpose test as more than 50 percent. One commenter requested that the final regulations specify the types of cost that should be considered in the output test and if research costs in connection with manufacturing semiconductor or semiconductor equipment should be considered in the numerator of output test. The commenter further requested that the regulations should clarify that the output capacity in the quantitative test should be measured at full life cycle instead of the year placed in service when the credit is determined. The commenter also requested that the threshold requirement rule be provided in the regulatory text. Another commenter requested that the final regulations include an example of a facility that does not meet the “primary purpose” requirement, especially for facilities that do not meet the 75 percent threshold.

The Treasury Department and the IRS have determined that the final

regulations should include a minimum threshold that would satisfy the “primary purpose” requirement. Accordingly, § 1.48D–4(c)(1) of the final regulations provides that a minimum threshold of more than 50 percent by cost of production, revenue received in an arm’s length transaction, or units produced satisfies the “primary purpose” requirement. Section 1.48D–4(c)(3) of the final regulations include examples illustrating the application of this rule, including examples involving semiconductor wafer production and a vertically integrated manufacturer. However, property placed in service in a taxable year must still meet the definition of qualified property under section 48D(b)(2) and § 1.48D–3 for its basis to be included as part of the qualified investment in the advanced manufacturing facility eligible for the section 48D credit. Specifying the types of cost that should be considered in the output test and the time period for the measurement would require a careful examination of all relevant facts and circumstances, any applicable Code sections and Federal income tax principles apart from those found in section 48D and the section 48D regulations. For these reasons, specifying the types of costs that should be considered and the time period for measurement is not appropriate for purposes of the final regulations.

One commenter requested that the words “grows” and “grow wafers” in proposed § 1.48D–4(c)(2) be removed in the final regulations if the definition of “semiconductor” is revised in the final regulations to include polysilicon, boules, wafers, and similar materials with electronic properties manufactured specifically for the purpose of semiconductor manufacturing. Another commenter requested that the final regulations clarify that “primary purpose” can include intermediate manufacturing steps or production of components for finished semiconductors. One commenter requested that the final regulations provide that, in the case of a vertically integrated company that manufactures semiconductors, property used in the crystal and boule growth be treated as property integral to the operation of an advanced manufacturing facility.

The Treasury Department and the IRS agree, in part, with commenters and the final regulations adopt, in part, the commenter’s request for a modification to proposed § 1.48D–4(c)(2) by removing “grows” and “grows wafers” from the final regulations, and providing that primary purpose can include certain intermediate manufacturing steps to conform with the definition of

“semiconductor manufacturing” in § 1.48D–2(n) of the final regulations. As previously described in section III.E. of this Summary of Comments and Explanation of Revisions, semiconductor wafer production includes the processes of growing single-crystal ingots and boules, as well as wafer slicing, bonding, etching and polishing, cleaning, epitaxial deposition, and metrology. Including property used in steps prior to growing single-crystal ingots and boules in the case of a vertically integrated semiconductor manufacturer is not consistent with the purpose and structure of the statute because the primary purpose of such property is not the manufacturing of semiconductors (as defined in § 1.48D–2(g) of the final regulations) or the manufacturing of semiconductor manufacturing equipment (as defined in § 1.48D–2(h) of the final regulations). Accordingly, the final regulations do not include such a rule for such vertically integrated businesses.

The final regulations provide examples to illustrate whether a facility has a primary purpose of manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment. The examples address whether the facility meets the primary purpose test in the taxable year the property is placed in service. Because the section 48D is an investment tax credit, and pursuant to § 1.46–3(d)(4), the investment credit is allowed in the taxable year the property is placed in service. In addition, the investment tax credit recapture rules under section 50(a) apply to the section 48D credit. If the property for which the section 48D credit is claimed ceases to be investment credit property (as defined in section 50(a)(6)(A)) with respect to the taxpayer before the close of the 5-year recapture period, then all or a portion of the section 48D credit is recaptured. If a taxpayer fails to meet the primary purpose test during any of the years during the 5-year recapture period, then the facility is no longer an advanced manufacturing facility, as defined in section 48D(b)(3) and the final regulations. The property the taxpayer placed in service to claim the section 48D credit is no longer qualified property under section 48D(b)(2)(A)(iv), because such property is no longer integral to the operation of an advanced manufacturing facility. Thus, the property has ceased to be investment credit property with respect to the taxpayer and, pursuant to section 50(a)(1)(A) and (B), all or a portion of

the section 48D credit claimed is recaptured.

VI. Comments on and Changes to Proposed § 1.48D–5

A. Definition of Single Advanced Manufacturing Facility Project

Commenters requested that the final regulations expand the list of items of property that may be treated as a single item for purposes of the beginning of construction rules to include “tooling equipment” and “semiconductor manufacturing equipment.” The list in proposed § 1.48D–5(a)(3) is non-exclusive. However, the Treasury Department and the IRS have determined that a clarification is appropriate to clarify that “tooling equipment” and “semiconductor manufacturing equipment” can be treated as a single item for purposes of the beginning of construction. Accordingly, § 1.48D–5(a)(3)(i) of the final regulations is revised to include “tooling equipment” and “semiconductor manufacturing equipment.”

Commenters requested that the final regulations establish a safe harbor for satisfying the single advanced manufacturing facility project determination if a taxpayer meets at least four of the factors listed under proposed § 1.48D–5(a)(3)(i). As noted in the Background section of this preamble, the final regulations primarily apply credit mechanics and procedures common to all investment credits. It is therefore appropriate for purposes of section 48D to provide a single project test similar to the test provided in other recent guidance applicable to investment credits. Accordingly, § 1.48D–5(a)(3)(i) of the final regulations provides that multiple properties or facilities will be treated as a single project if, at any point during construction of the multiple properties or facilities, they are owned by a single taxpayer (subject to the related taxpayer rule discussed later in this section of this Summary of Comments and Explanation of Revisions), and any two or more of the factors listed in § 1.48D–5(a)(3)(i) are met. Under § 1.48D–5(a)(3)(ii) of the final regulations, related taxpayers would be treated as one taxpayer in determining whether multiple facilities or properties are treated as a single project. Related taxpayers would be defined as members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)).

Commenters also requested that the final regulations modify proposed § 1.48D–5(a)(3)(i)(F) by changing “single

master construction contract” to a “single master construction plan,” and add a new factor based on whether the properties or facilities achieve efficiencies and economies of scale through shared semiconductor manufacturing resources. However, planning and designing are generally regarded as preliminary activities that would not satisfy the Physical Work Test, and treating multiple items of qualified property as a single item based on a “construction plan” as opposed to a “construction contract” would not inform whether construction has begun for purposes of section 48D. Including a factor based on whether the properties or facilities achieve efficiencies and economies of scale through shared semiconductor manufacturing resources would inject significant complexity into the final regulations and likely cause additional uncertainty regarding the scope of the term “single advanced manufacturing facility project” due to its inherently factual nature. Accordingly, the final regulations do not incorporate the commenters’ recommendations.

One commenter requested that the final regulations clarify the disaggregation of a single advanced manufacturing facility project under proposed § 1.48D–5(a)(3)(iv). The commenter requested that the final regulations clarify that the relevant facts and circumstances to satisfy the continuity requirement for disaggregated separate items of property or facilities should be the facts and circumstances from the time that the continuity safe harbor period ends until the property is placed in service. The Treasury Department and the IRS decline to adopt the recommendation because it would be inconsistent with the continuity requirement. Those disaggregated separate items of property or facilities were not placed in service prior to the continuity safe harbor deadline and therefore, the taxpayer is not deemed to satisfy the continuity requirement with respect to those items from the beginning of construction date through the end of the continuity safe harbor period. Accordingly, the final regulations do not incorporate the commenter’s recommendation.

The commenter also requested that the final regulations address the time period for which the remaining disaggregated separate items of property or facilities may satisfy the continuity requirement under a facts and circumstances determination, pursuant to proposed § 1.48D–5(a)(3)(iv). The commenter recommended that the period start when physical work of a significant nature begins with respect to

the disaggregated separate item of property rather than when construction began based on the single advanced manufacturing facility project. The commenter recommended that, alternatively, a continuous construction or continuous effort for any one item of property within the single advanced manufacturing facility project be attributed to all properties within the project to satisfy the continuity requirement. The Treasury Department and the IRS have determined that the relevant facts and circumstances determination in proposed § 1.48D–5(a)(3)(iv) is appropriate for determining whether a disaggregated separate item of property satisfies the continuity requirement. Accordingly, the final regulations do not incorporate the commenter’s recommendation.

B. Beginning of Construction, In General

A commenter requested that the final regulation clarify whether a taxpayer applies the same test for all construction in progress at one contiguous location to determine whether construction began before December 31, 2026. Proposed § 1.48D–5(b)(1) provides that a taxpayer may establish that construction of an item of property (defined as a single advanced manufacturing facility project under proposed § 1.48D–5(a)(3), or an item of qualified property under proposed § 1.48D–3(b)) of a taxpayer begins under either the Physical Work Test or the Five Percent Safe Harbor. Thus, whether a taxpayer applies the same test for all construction in progress at one contiguous location depends on the unit of property being measured. For this reason, the Treasury Department and the IRS have determined that a clarification is not necessary.

C. Physical Work Test

Commenters requested that the final regulations include examples of on-site and off-site physical work of a significant nature specific to the semiconductor industry. One commenter recommended, at a minimum, including on-site activities such as excavation for the foundation of a facility, pouring concrete into a foundation of a facility, and installing underground utilities, and including off-site activities such as the acquisition of key systems, manufacture of components, mounting equipment, and constructing support structures such as steel trusses. The Treasury Department and the IRS have determined that including certain examples of on-site and off-site work to provide additional certainty to taxpayers is appropriate for determining whether physical work of a significant nature has occurred.

Accordingly, § 1.48D–5(c)(2) of the final regulations includes a non-exclusive list of examples of on-site and off-site activities, consistent with IRS guidance pertaining to beginning of construction.

D. Five Percent Safe Harbor

One commenter requested that a payment made by the taxpayer for property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract but is not yet provided to the taxpayer and is not yet incurred by the other person is considered paid or incurred with respect to the taxpayer for purposes of the Five Percent Safe Harbor. As noted, the section 48D regulations primarily apply long-established credit mechanics and procedures common to all investment credits, including application of the principles of section 461. Therefore, the final regulations retain the rule set forth in proposed § 1.48D–5(d)(2).

E. Continuity Requirement

Commenters requested that the final regulations provide examples of the facts and circumstances that would support the conclusion that the taxpayer satisfied the continuity requirement. The Treasury Department and the IRS have determined that including an example of facts and circumstances that would support a particular factor being met under the continuity facts and circumstances test is appropriate for clarifying the continuity requirement in this context. Accordingly, the final regulations clarify that a taxpayer has met the factor of paying or incurring additional amounts included in the total cost of the property for a taxable year in which it pays or incurs (within the meaning of § 1.461–1(a)(1) and (2)) five percent or more of the total cost of the property each calendar year after the calendar year during which construction of the property began for purposes of section 48D and the section 48D regulations.

One commenter requested that the final regulations include “industry downturns” in the non-exclusive list of construction disruptions under proposed § 1.48D–5(e)(4)(iii). The commenter explained that the semiconductor industry is highly cyclical in nature and semiconductor companies typically reduce capital expenditures and delay on-going construction of new semiconductor facilities during industry downturns. The commenter recommended defining “industry downturn” as a 20 percent reduction to publicly traded stock value during the preceding 12-month period.

The commenter also requested that the final regulations include a provision that Treasury may exercise its authority to identify per se construction disruptions in future guidance. The Treasury Department and the IRS decline to adopt these recommendations, but will consider whether future guidance, specific to any market and construction disruptions, is necessary, as needed.

A commenter requested that the final regulations modify the continuity safe harbor in proposed § 1.48D–5(e)(6) by creating a bright-line rule that all property placed in service before December 31, 2036, will be deemed to satisfy the continuity safe harbor. The commenter argued that the structure of a continuity safe harbor that measures from the beginning of construction, in the context of semiconductor manufacturing, creates an incentive to intentionally delay the beginning of construction date to as late in 2026 as possible to more closely align the time that construction begins to the beginning of the tolling of the 10-year safe harbor period. Section 48D(e) provides that a section 48D credit may not be claimed for property the construction of which begins after December 31, 2026. The March 2023 proposed regulations provide that a taxpayer can establish that construction of property has begun by meeting either the Physical Work Test or the Five Percent Safe Harbor. Under either test, a taxpayer must meet the Continuity Requirement by demonstrating continuous construction or continuous efforts based on the relevant facts and circumstances. In lieu of demonstrating continuous construction or continuous efforts, however, the taxpayer is deemed to satisfy the continuity requirement, under the continuity safe harbor, by placing the property in service within ten calendar years after the date that the Physical Work Test or the Five Percent Safe Harbor is first satisfied. Taxpayers are not obligated to satisfy the continuity safe harbor to meet the continuity requirement. For these reasons, the Treasury Department and the IRS decline to adopt the commenter’s recommendation in the final regulations.

A commenter requested that the final regulations include a monetary safe harbor in which a taxpayer is deemed to satisfy the continuous construction test or continuous efforts test in the case an advanced manufacturing facility project if the taxpayer pays or incurs a certain dollar amount of the total cost of the property during each taxable year before the property is placed in service. Paying or incurring costs towards completion of

a project is one of many factors that may indicate the continuity requirement is met. As such, the Treasury Department and the IRS decline to include an additional safe harbor in the final regulations that is solely dependent on the dollar amount of monetary spend in a given taxable year. However, as previously described, the final regulations clarify that a taxpayer has met the factor of paying or incurring additional amounts included in the total cost of the property for a taxable year in which it pays or incurs (within the meaning of § 1.461–1(a)(1) and (2)) five percent or more of the total cost of the property each calendar year after the calendar year during which construction of the property began.

VII. Comments on and Changes to Proposed § 1.50–2

A. Applicable Transaction

One commenter requested clarification of whether the term “applicable transaction” includes the expansion of manufacturing semiconductor manufacturing equipment in a foreign country of concern. Section 50(a)(6)(D) provides that “applicable transaction” means a “significant transaction” involving the material expansion of “semiconductor manufacturing capacity” in a foreign country of concern. Section 50(a)(6)(D) does not refer to manufacturing semiconductor manufacturing equipment. For that reason, the term “applicable transaction” does not include the expansion of manufacturing semiconductor manufacturing equipment in a foreign country of concern. Section 50(a)(6)(E), however, defines the term “applicable taxpayer” as any taxpayer who has been allowed a section 48D credit for any prior taxable year. Thus, a taxpayer that was allowed a section 48D credit for manufacturing semiconductor manufacturing equipment as defined in § 1.48D–2(g) of the final regulations is an “applicable taxpayer” for purposes of section 50(a)(3) and (a)(6)(D) and would be subject to recapture under those provisions if the taxpayer engaged in an “applicable transaction” involving the material expansion of semiconductor manufacturing in a foreign country of concern.

Commenters suggested that the final regulations provide that a transaction does not trigger recapture under section 50(a)(3) if such transaction does not trigger a clawback under an entity’s required agreement with the Department of Commerce. Consistent with section 50(a)(6)(D), if a taxpayer enters into a required agreement with the Secretary

of Commerce, the final regulations define the term “significant transaction” to have the same meaning as provided in the required agreement for purposes of section 48D and the section 48D regulations.

B. Definition of Applicable Taxpayer

Several commenters requested that the final regulations treat only partners that actually claim a section 48D credit as an “applicable taxpayer,” as opposed to all partners in the partnership as required under proposed § 1.50–2(b)(2)(i)(C). Two of the commenters argued that activities undertaken outside the partnership by one partner should not trigger recapture of the section 48D credit claimed by another partner in the partnership. The Treasury Department and the IRS have determined that certain modifications are appropriate for defining “applicable taxpayer” in the context of qualified property owned by a partnership or S corporation. Accordingly, the final regulations retain the general definition of “applicable taxpayer” from proposed § 1.50–2(b)(2)(i)(A) and include special rules for partnerships and S corporations.

The final regulations clarify that in the case of property placed in service by a partnership, the term “applicable taxpayer” means any direct or indirect partner in a partnership: (1) who was allowed a section 48D credit for such property for any taxable year prior to when such partnership entered into an applicable transaction and includes such partnership; (2) with respect to the partner’s share of any section 48D credit allowed for such property prior to when such partner entered into an applicable transaction; or (3) with respect to the partner’s share of any tax-exempt income from a partnership that made an election under section 48D(d)(2) for any taxable year prior to when such partner entered into an applicable transaction. Consistent with proposed § 1.50–2(b)(2)(i)(B), the final regulations provide that the term “applicable taxpayer” means a partnership that made an election under section 48D(d)(2) for any taxable year prior to the taxable year in which the partnership entered into an applicable transaction. The final regulations include similar rules for S corporations and shareholders. The final regulations also include additional examples to clarify the application of the rules regarding the term “applicable taxpayer.”

C. Significant Transactions in General and Certain Required Agreements Under Section 103(b) of the CHIPS Act

Section 50(a)(6)(D) requires that the meaning of the term “significant transaction” be determined by the Secretary in coordination with the Secretary of Commerce and the Secretary of Defense. Accordingly, the March 2023 proposed regulations defined the term “significant transaction” to align and harmonize the scope of applicable transactions under section 50(a)(3) with the scope of prohibited material expansion transactions within the meaning of proposed 15 CFR 231.121 (relating to the Prohibition on Certain Expansion Transactions) and included the definition of “significant transaction” in proposed 15 CFR 231.101 as contained in the Commerce Proposed Rule. However, unlike the Commerce Proposed Rule, the Commerce Final Rule does not include a definition of “significant transaction.” Rather, pursuant to section 103(b) of the CHIPS Act, what constitutes a “significant transaction” is to be defined in the required agreement entered into between a funding recipient and the Secretary of Commerce. Accordingly, the Treasury Department and the IRS (in coordination with the Secretary of Commerce and the Secretary of Defense) have determined that, consistent with section 50(a)(6)(D), the term “significant transaction” means either a “significant transaction” as that term is generally defined in § 1.50–2(b)(10)(i) of the final regulations, or, with respect to a taxpayer that has entered into a required agreement with the Secretary of Commerce, as the term “significant transaction” is defined in § 1.50–2(b)(10)(ii) of the final regulations, in the required agreement with the Department of Commerce. Consistent with the definition of “significant transaction” in § 1.50–2(b)(10)(ii) of the final regulations, the defined terms in the required agreement with the Department of Commerce control for purposes of determining the meaning of the term “significant transaction.”

One commenter requested that the section 50(a)(3) and (a)(6)(D) recapture provisions and the Department of Commerce’s award clawback rules should align the set of restrictions on transactions in foreign countries of concern to avoid disrupting ordinary business activities at existing legacy facilities, especially given the length of time of the advanced manufacturing investment credit recapture period. The Treasury Department and the IRS note that the final regulations harmonize the

restrictions to the extent provided under the statute.

D. Definition of Significant Transaction

Several commenters requested modifications to the definition of “significant transaction” in the March 2023 proposed regulations. Some commenters requested the final regulations increase the \$100,000 threshold for determining whether a transaction is a “significant transaction.” Commenters also requested that the final regulations explicitly state that transactions with a principal purpose of funding ordinary course operations (for example, payroll, rent and utilities, marketing and advertising, and similar items) are not considered significant.

In response to comments, the Treasury Department and the IRS are removing the monetary threshold for “significant transaction”, and, instead, the revised definition focuses on the type of transaction that could result in material expansion. This approach is consistent with the intent of the recapture rule in section 50(a)(3). Accordingly, the definition of “significant transaction” has been modified to include (1) an investment, whether proposed, pending, or completed, including any capital expenditure, loan, or gift; (2) the formation of a subsidiary, whether classified as a corporation or partnership for Federal tax purposes; (3) a merger, acquisition, or takeover, including (a) the acquisition of a new or additional ownership interest in an entity, (b) the acquisition of a material portion of the assets of an entity, or (c) a consolidation; (4) the formation of a joint venture; or (5) a long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner. This definition, coupled with the revision to the definition of material expansion, would clarify that transactions with a principal purpose of funding ordinary course operations are not significant transactions.

One commenter requested that the final regulations eliminate the 85 percent rule under proposed § 1.50–2(b)(10)(iii) from the definition of “significant transaction” or replace it with a simpler metric based on the ratio of units an entity manufactures in a foreign country of concern to the units shipped into a foreign country of concern. Another commenter requested that the Treasury Department and the IRS coordinate with the Department of Commerce to finalize a single uniform

standard to identify what is a “final product” for purposes of proposed § 1.50–2(b)(10)(iii). The proposed definition of “significant transaction” was intended to align and harmonize with the scope of certain prohibited expansion transactions under the Commerce Proposed Rule, pursuant to the Secretary’s authority under section 50(a)(6)(D)(i) to determine whether transactions are significant transactions. Accordingly, to maintain this alignment, the final regulations retain the 85 percent threshold in its consideration of whether certain production of legacy semiconductors “predominately serves the market” in a foreign country of concern. Because the meaning of the term “predominately serves the market” is intended to be consistent with the Commerce Final Rule, the Treasury Department and the IRS decline to interpret “serves the market” to refer to the location to which the semiconductors are first shipped.

Two commenters requested that the prohibition on technology licensing and joint research be removed from the definition of significant transaction, noting that the CHIPS Act does not refer to “technology licensing.” Several commenters suggested that the definition of “technology licensing” in proposed § 1.50–2(b)(11) is overly broad and could include general business operations, nondisclosure agreements, the discussion of products or technology, patents, trade secrets, know-how, intraparty transfer agreements, or arrangements operating under current export control authorization. The commenters requested that the final regulations narrow the definition to focus on the actual licensing of the technology or products that are subject to restrictions rather than just the discussion of products or technology. One commenter suggested that taxpayers and their affiliate will be required to review and possibly terminate pre-existing agreements based on the proposed definition.

Removing the prohibition on joint research or technology licensing agreements with a foreign entity of concern would allow a taxpayer to circumvent section 50(a)(3) and (a)(6)(D) through the use of joint research or technology licensing transactions. However, the Treasury Department and the IRS agree with the commenter’s suggestions concerning the scope of the term “technology licensing” in the March 2023 proposed regulations given that the definition of “technology licensing” in the Commerce Final Rule was modified, consistent with these comments. Accordingly, the final regulations provide that the terms “joint

research” and “technology licensing” have the same meaning as provided in 15 CFR 231.105 and 231.120, respectively.

One commenter stated that the affiliated group rule under proposed § 1.50–2(b)(10)(v) (establishing a 50 percent ownership test) is inconsistent with the reference in 15 U.S.C. 4652(a)(6)(C)(iii) to section 1504(a) of the Code. The Treasury Department and the IRS agree that the affiliated group rule is inconsistent with the reference in 15 U.S.C. 4652(a)(6)(C)(iii) to section 1504(a) and for that reason, the affiliate group rule has been removed from the final regulations.

E. Existing Facility

Commenters requested that the definition of an “existing facility” in proposed § 1.50–2(b)(5) be revised in the final regulations to clarify whether the term includes a facility undergoing production ramp-up and thus, on the date on which qualified property was placed in service, was not operating at full production level for which it was designed. One commenter requested that the final regulations clarify that upgrades and productivity improvements made to a facility during the ordinary course of business operations is not considered a significant renovation and the date for measuring semiconductor manufacturing capacity is the placed in service date as intended by the statute. The Treasury Department and the IRS have determined that only facilities built, equipped, and operating prior to a taxpayer placing in service qualified property as defined in section 48D(b)(2) and § 1.48D–3 are considered to be existing facilities. A facility that undergoes significant renovations as defined in § 1.50–2(b)(9) of the final regulations would no longer qualify as an existing facility. The final regulations do not require the existing facility to be operating at the semiconductor manufacturing capacity for which it was designed, as required by the March 2023 proposed regulations. As noted in section VII.G of this Summary of Comments and Explanation of Revisions, the final regulations modify the definition of a “significant renovation” to mean building new cleanroom space or adding a production line or other physical space to an existing facility, such that upgrades and productivity improvements made to a facility during the ordinary course of business operations would not be considered a significant renovation.

F. Material Expansion

Commenters requested that the definition of “material expansion” in proposed § 1.50–2(b)(7) be modified in the final regulations to allow for an increase of semiconductor manufacturing capacity greater than 5 percent. One commenter requested that the 5 percent increase in capacity be measured on an average basis over the course of a year. Commenters also requested that the final regulations provide a finite list specifying business activities, products and processes that constitute a material expansion of semiconductor manufacturing. The Treasury Department and the IRS have determined that raising the five percent threshold for allowable material expansions or measuring the five percent increase capacity on average over the course of a year would undermine the objective of the recapture rule under section 50(a)(3). The Treasury Department and the IRS have further determined that specifying business activities, products and process that constitute a material expansion of semiconductor manufacturing is consistent with the statute. Accordingly, the final regulations retain the five percent threshold and clarify that the increase in capacity is due to the addition of a cleanroom, production line or other physical space, or series of such additions during the applicable period. The final regulations clarify that the term “material expansion” includes any construction of a new facility for semiconductor manufacturing.

G. Significant Renovations and Semiconductor Manufacturing Capacity

Several commenters requested that the scope of the definition of “significant renovation” in proposed § 1.50–2(b)(9) be modified to encompass only new cleanroom construction, production space, increase in the square footage of an existing facility by a specified percentage, or actual output of the facility. The commenters argued that the March 2023 proposed regulations unnecessarily narrowed the scope of the exemption for legacy semiconductors as enacted, noting that the CHIPS Act does not include the term “significant renovation.” Some commenters also requested that the ten percent ceiling for increasing semiconductor manufacturing capacity be increased to fifteen percent. The commenters further requested that the final regulations clarify that an operating facility that has not yet reached its full capacity will be considered an “existing facility.” The Treasury Department and the IRS have

considered the commenters' suggestions and have determined that the "significant renovation" and ten percent threshold provisions are necessary to prevent a taxpayer from circumventing the recapture provisions of section 50(a)(3)(A) by engaging in a "significant renovation" of an "existing facility." However, the Treasury Department and the IRS agree with the commenters that clarification is needed concerning what is the scope of a "significant renovation." Accordingly, the final regulations retain the rules for a "significant renovation" of an existing facility but clarify that a "significant renovation" means building new cleanroom space or adding a production line or other physical space to an existing facility that, in the aggregate during the applicable period, increases semiconductor manufacturing capacity by 10 percent or more.

One commenter requested that the final regulations clarify that, with respect to a specific facility, a taxpayer's semiconductor manufacturing capacity is measured by taking into account both (i) the taxpayer's own semiconductor manufacturing capacity in that facility, and (ii) any semiconductor manufacturing capacity of another party to the extent the other party's operations are carried on for the benefit of the taxpayer. The commenter noted that semiconductor fabrication companies commonly outsource assembly and test work to third parties referred to as outsourced semiconductor assembly and test providers, or "OSATs." The commenter further noted that semiconductor manufacturer may lease a portion of a facility in a foreign country of concern to an OSAT that performs assembly and test work for the benefit of the taxpayer within the same facility. One commenter, included as an attachment to its comments on the March 2023 proposed regulations, a letter that the commenter sent to the Department of Commerce concerning the Commerce Proposed Rule. The commenter requested that the Commerce Final Rule provide that semiconductor manufacturing capacity be measured in wafer starts per year, as opposed to wafer starts per month.

Consistent with the Commerce Final Rule in 15 CFR 231.117, the final regulations provide that semiconductor manufacturing capacity is appropriately measured in wafer starts per month not including OSAT production. Section 1.50-2(b)(8) of the final regulations include a rule for determining "semiconductor manufacturing capacity" in the case of semiconductor wafer production. The final regulations clarify that wafer production is

measured in starts per month and in the case of a semiconductor wafer production facility that includes the processes of growing single-crystal ingots and boules, wafer slicing, etching and polishing, cleaning, epitaxial deposition, and metrology, manufacturing capacity is measured in wafer starts per month.

H. Technology or Product That Raises National Security Concerns

One commenter requested that the final regulations exclude from the definition of semiconductors critical to national security, any semiconductors that reduce carbon emissions because they enhance rather than reduce U.S. national security (specifically SiC power semiconductors). The Treasury Department and the IRS appreciate that the performance advantages offered by compound semiconductors over silicon semiconductors, such as wider bandgap, lower operating voltages, and higher electron mobility, are vital to many military applications. Moreover, the governments of some foreign countries of concern have identified compound semiconductors as a strategic emerging industry. They have set ambitious goals for acquisition and development of compound semiconductor technology and strive to become global leaders in the industry. However, while exports of certain semiconductors are not subject to national security or regional stability export controls, joint research, or technology licensing involving these products with foreign entities of concern can nevertheless pose a significant risk to national security. Taxpayers that claim a section 48D credit should not further that risk. For these reasons, the Treasury Department and the IRS decline to adopt the commenter's request.

I. Exception From the Definition of Applicable Transaction for the Manufacturing of Legacy Semiconductors

Several commenters requested that the final regulations specifically include assembly test manufacturing (ATM) that uses non-3D packaging in the definition of legacy semiconductor. The commenters argued that given that ATM is generally a back-end operation, with billions of pre-existing investments, it is appropriate for these operations to be viewed under the definition of legacy unless they specifically perform 3D integration. The Treasury Department and the IRS agree with the commenters' suggestion. Accordingly, the final regulations, consistent with 15 CFR 231.107, clarify that only semiconductors utilizing advanced 3D

integration packaging such as by directly attaching one or more die or wafer, through silicon vias (TSV) or through mold vias (TMV), or other advanced methods are not considered to be legacy semiconductors.

Commenters requested that the final regulations conform the example of memory semiconductor under proposed § 1.50-2(c)(2)(ii) to current export controls. Section 50(a)(6)(D)(ii) provides that the exception for legacy semiconductors applies as defined in section 9902(a)(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act. The example of a memory semiconductor in proposed § 1.50-2(c)(2)(ii) is consistent with the statutory definition of a legacy semiconductor. Accordingly, the Treasury Department and the IRS decline to revise the example of a memory semiconductor in the final regulations.

Commenters requested that what is considered a leading or "legacy" semiconductor should be adjusted over the course of a 10-year period and should be connected to authorization permitted under export control licensing. Proposed § 1.50-2(c)(2)(iii) includes among the definition of a "legacy semiconductor" a semiconductor identified by the Secretary of Commerce in a public notice issued under 15 U.S.C. 4652(a)(6)(A)(ii). The Secretary of Commerce is required, pursuant to 15 U.S.C. 4652(a)(6)(A)(ii), to update the definition of "legacy semiconductor" on a regular basis and at least every two years. Thus, the definition of what is considered a leading or legacy semiconductor will be adjusted over the course of a 10-year period, as the Secretary of Commerce deems appropriate as reflected in § 1.50-2(c)(2) of the final regulation.

One commenter requested that the final regulations provide that the exclusion of any technology from the definition of "legacy semiconductor" in the future pursuant to 15 U.S.C. 4652(a)(6)(A)(ii) be applied only prospectively and not to any transactions previously entered into. Section 50(a)(6)(D)(ii) provides that the exception for legacy semiconductors applies as defined in section 9902(a)(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act. Section 103(b) of the CHIPS Act added 15 U.S.C. 4652(a)(6)(A)(ii) and requires the Secretary of Commerce, after public notice and an opportunity for comment and if applicable and necessary, to issue

a public notice identifying any additional semiconductor technology included in the meaning of the term “legacy semiconductor” on a regular basis, and at least every two years. The commenter’s recommendation to apply only prospectively any technology excluded from the definition of “legacy semiconductor” by the Secretary of Commerce pursuant to 15 U.S.C. 4652(a)(6)(A)(ii) is beyond the application of sections 48D and 50 and the section 48D regulations. For that reason, the Treasury Department and the IRS decline to adopt the commenter’s recommendation. One commenter requested that the final regulations modify the definition of legacy semiconductors that is of 28 nanometer generation or older under proposed § 1.50–2(c)(2)(i) by deleting the reference to gate length and including technologies using the planar transistor architecture that should be considered the same as 28 nanometer generation technology. The Treasury Department and the IRS decline to adopt the commenter’s recommendation. The proposed definition of legacy semiconductor with respect to 28 nanometer generation technology is consistent with the CHIPS Act and accurately captures the definition of legacy semiconductors. The proposed definition also prevents a company from using or creating a derivation of their existing 28 nanometer technology for use in a foreign country of concern that is inconsistent with the kind of material expansion of semiconductor manufacturing the CHIPS Act seeks to constrain.

Several commenters requested that the final regulations narrow the exception under proposed § 1.50–2(c)(3)(iii) to “advanced” 3D packaging techniques, so that TSV and TMV are excluded from the definition of legacy semiconductor. In coordination with the Department of Commerce and the Department of Defense, the Treasury Department and the IRS have incorporated this recommendation in the final regulations. The Commerce Final Rule clarifies the meaning of the term “legacy semiconductor” with respect to a semiconductor wafer facility, a semiconductor fabrication facility, and a semiconductor packaging facility. Again, in coordination with the Department of Commerce and the Department of Defense, the Treasury Department and the IRS have incorporated this clarification in the final regulations.

The March 2023 proposed regulations provided a definition of “legacy semiconductor” that was identical to

the definition in Commerce Proposed Rule. Consistent with section 50(a)(6)(D)(ii) of the Code and section 9902(a)(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act, the final regulations define the term “legacy semiconductor” as having the same meaning as that term is defined in the Commerce Final Rule, 15 CFR 231.107.

J. Standards for Determining the Satisfaction of the Commissioner

Commenters requested that the final regulations include standards for establishing what is considered to be to “the satisfaction of the Secretary” or “the satisfaction of the Commissioner” for purposes of section 50(a)(3)(B) and proposed § 1.50–2(a)(2), respectively. Commenters suggested that the final regulations address how a taxpayer may demonstrate cessation or abandonment of a project, and further suggested that those actions could include proof of cancelled contracts, the withdrawal or cancellation of work permits, a board resolution that expressly cancels the applicable transaction, or the issuance of a public statement that expressly cancels the applicable transaction. Commenters also suggested that final regulations include a non-exhaustive list of documents that can be used to establish cessation or abandonment of a project. The Treasury Department and the IRS have determined that the rules suggested by the commenters, as well as similar provisions, would likely cause additional uncertainty regarding the scope of the term “to the satisfaction of the Commissioner” due to its inherently factual nature. As a result, the final regulations do not incorporate the commenters recommendations.

K. Records Retention

The Treasury Department and the IRS requested comments on the ability of applicable taxpayers to comply with potential record keeping requirements in addition to those required by current law and on what specific procedures should be considered to ensure that the IRS has sufficient information to determine whether an applicable taxpayer engages in an applicable transaction within the meaning of section 50(a)(3) and proposed § 1.50–2. Several commenters suggested that any record retention should be limited to records obtained in the ordinary course of business. Another commenter suggested the IRS could include a form or attachment to annual tax returns with basic questions for the IRS to ascertain whether an applicable taxpayer may

have engaged in an applicable transaction during the taxable year. Section 50(a)(3)(C) provides that the Secretary shall issue regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of section 50(a)(3), including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of section 50(a)(3). The Treasury Department and the IRS have determined that records retained in a taxpayer’s ordinary course of business, and as required under current applicable periods of limitations under section 6501 of the Code on assessment and collection of tax under chapter 1 with respect to the applicable taxpayer’s return filed for the taxable year that includes the close of the 10-year period beginning on the date such taxpayer placed in service investment credit property that is eligible for the section 48D credit, are sufficient. Accordingly, the final regulations do not incorporate any additional record keeping requirements.

Some commenters requested that the final regulations provide for more of an alignment of the section 48D credit requirements and the Department of Commerce grant regulatory requirements including standardizing the same 10-year recapture or clawback period and streamline reporting and recordkeeping requirements. The commenters also requested that responsibility for administering the various overlapping rules and taxpayer notification requirements be delegated to a single agency or an interagency body. Section 50(a)(3) provides for recapture of the section 48D credit if there is an applicable transaction by an applicable taxpayer before the close of the ten-year period beginning on the date such property placed in service. Pursuant to 15 U.S.C. 4652(a)(6)(C)(i), the Commerce Final Rule, 15 CFR 231.202, provides that the 10-year period for the Expansion Clawback begins on the date of the award of Federal financial assistance under 15 U.S.C. 4652. The preamble to the Commerce Final Rule clarifies that the applicable term for the technology clawback (15 CFR 231.203) is defined in the relevant award documents. Pursuant to the relevant statutes, the recapture period for a section 48D credit begins on the date the qualified property is placed in service, and the Expansion Clawback and technology clawback periods begin on the date of the award of financial assistance and as defined in the award documents, respectively. For this

reason, aligning the recapture period with the clawback period would be inconsistent with section 50(a)(3)(A).

Section 50(a)(6)(D)(i) requires that the Secretary (in coordination with the Secretary of Commerce and the Secretary of Defense) define the term “significant transaction” for purposes of section 50. Consistent with the statutory directive in section 50(a)(6)(D)(i), § 1.50–2(b)(10) of the final regulations defines the term “significant transaction” as determined by the Treasury Department and the IRS in coordination with the Department of Commerce and the Department of Defense. Treasury regulations that otherwise would align or streamline the reporting and recordkeeping requirements or delegate the administrative functions to a single agency or interagency body are beyond the scope of the statute.

L. Private Letter Rulings

Commenters requested that the IRS grant private letter rulings or other determinations on the beginning of construction, effective date, costs, and or other matters relevant to section 48D. Consistent with guidance published in the Internal Revenue Bulletin, the IRS ordinarily will not issue private letter rulings to a taxpayer regarding the beginning of construction requirement under section 48D with respect to property placed in service after these final regulations are published in the **Federal Register**. In addition, the IRS may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration, including due to resource constraints, or on other grounds whenever warranted by the facts or circumstances of a particular case.

Applicability Date

The final regulations set forth in §§ 1.48D–1 through 1.48D–5, and 1.50–2 apply to property that is placed in service after December 31, 2022, and during a taxable year ending on or after October 23, 2024.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and

a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This regulation mentions elections that are made in accordance with section 48D(d)(1) and (d)(2) of the Code and § 1.46–5 of the Treasury Regulations. These elections are made with Form 3468, *Investment Credit*, which are already approved by the OMB under 1545–0074 for individual/sole proprietor filers, 1545–0123 for business filers, and 1545–0155 for trust and estate filers. This regulation is not changing those election requirements; and is not telling taxpayers to make these elections but explaining their treatment for the credit if they have made these elections.

This regulation also describes recapture of the advanced manufacturing investment credit in the case of certain expansions, as detailed in § 1.50–2(a). The reporting of the recapture event will still be required to be reported using Form 4255, *Recapture of Investment Credit*. This form is approved under OMB control numbers 1545–0074 for individuals/sole proprietors, 1545–0123 for business entities, and 1545–0166 for trust and estate filers. The final regulation is not changing or creating new collection requirements not already approved by OMB on Form 4255.

This regulation includes recordkeeping requirements outlined in § 1.50–2 for recording transactions, investments, facilities information, and agreements with the Department of Commerce. The IRS expects that these records are usual and customary business records; however, the taxpayers will need to keep these records as long as they are admissible by the statute, typically for 10 years. Therefore, the IRS is considering these to be general tax records under § 1.6001–1. These records are required for the IRS to validate that the taxpayers have met the regulatory requirements; and are required as proof that the taxpayer has not engaged in an applicable transaction or that the taxpayer has ceased or abandoned the applicable transaction within 45 days of a determination and notice by the Commissioner, pursuant to section 50(a)(3). For PRA purposes, general tax records are already approved by OMB under 1545–0074 for individual/sole proprietor filers, 1545–0123 for business filers, and 1545–0092 for trust and estate filers.

II. Regulatory Flexibility Act

The Treasury Department and the IRS determined the rule will not have a

significant economic impact on a substantial number of small entities. Although the rules affect small entities, data are not readily available about the number of taxpayers affected. Section 48D affects the semiconductor manufacturing industry, and specifically, individuals and entities that make qualified investments in facilities engaged in the manufacturing of semiconductors and semiconductor manufacturing equipment. The economic impact of these regulations is not likely to be significant, because the regulations substantially incorporate statutory changes by the CHIPS Act in establishing section 48D and amending section 50(a). The regulations will also make it easier for taxpayers to comply with section 48D and the changes to section 50(a). Pursuant to the RFA (5 U.S.C. chapter 6), the Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f), the notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for the Office of Advocacy of the SBA did not provide any comments on the March 2023 proposed regulations.

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 (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. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Regulatory Planning and Review

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.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these final regulations is Lani Sinfield, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry, in numerical order, for § 1.50–2 to read in part as follows:

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

Section 1.50–2 also issued under 26 U.S.C. 50(a)(3)(C), and 50(a)(6).

* * * * *

■ **Par. 2.** Section 1.48D–0 is revised to read as follows:

§ 1.48D–0 Table of contents.

This section lists the table of contents for §§ 1.48D–1 through 1.48D–6.

§ 1.48D–1 Advanced manufacturing investment credit determined.

- (a) Overview.
- (b) Determination of credit.
- (c) Coordination with section 47.
- (1) In general.
- (2) Example.

- (d) Applicability date.

§ 1.48D–2 Definitions.

- (a) In general.
- (b) Applicable transaction.
- (c) Basis.
 - (1) In general.
 - (2) Transition rule.
 - (d) Beginning of construction.
 - (e) Eligible taxpayer.
 - (f) Foreign entities.
 - (1) Foreign entity.
 - (2) Foreign entity of concern.
 - (g) Manufacturing of semiconductors.
 - (h) Manufacturing of semiconductor manufacturing equipment.
 - (i) Placed in service.
 - (j) Qualified investment.
 - (1) In general.
 - (2) Special rules for certain passthrough entities.
 - (i) Partnership.
 - (ii) S corporation.
 - (iii) Estate or trust.
 - (3) Qualified progress expenditures election.
 - (i) In general.
 - (ii) Special rules for certain passthrough entities.
 - (4) Examples.
 - (i) Example 1.
 - (ii) Example 2.
 - (k) Section 48D credit.
 - (l) Section 48D regulations.
 - (m) Semiconductor.
 - (1) Semiconductor manufacturing.
 - (2) Semiconductor wafer production.
 - (3) Semiconductor fabrication.
 - (4) Semiconductor packaging.
 - (5) Assembly.
 - (6) Testing.
 - (n) Advanced packaging.
 - (o) Semiconductor manufacturing equipment.
 - (p) Statutory references.
 - (1) Chapter 1.
 - (2) Code.
 - (3) Subtitle A.
 - (q) Applicability date.

§ 1.48D–3 Qualified property.

- (a) In general.
- (b) Qualified property.
- (c) Tangible depreciable property.
 - (1) In general.
 - (2) Exception.
 - (3) Buildings or portions of a building not excluded by section 48D(b)(2)(B)(ii).
 - (d) Constructed, reconstructed, or erected by the taxpayer.
 - (e) Original use.
 - (1) In general.
 - (2) Treatment of inventory.
 - (f) Part of an advanced manufacturing facility.
 - (1) In general.
 - (2) Property that is not located or co-located at an advanced manufacturing facility or on a contiguous piece of land to the advanced manufacturing facility.
 - (g) Integral to the operation of an advanced manufacturing facility.
 - (1) In general.
 - (2) Vertically integrated manufacturers.
 - (3) Specific examples of integral property.
 - (4) Research or storage facilities.
 - (5) Examples.

- (i) Example 1.
- (ii) Example 2.
- (h) Applicability date.

§ 1.48D–4 Advanced manufacturing facility of an eligible taxpayer.

- (a) In general.
- (b) Advanced manufacturing facility.
- (c) Primary purpose.
 - (1) In general.
 - (2) No primary purpose.
 - (3) Examples.
 - (i) Example 1: Primary purpose; in general
 - (ii) Example 2: Primary purpose; semiconductor wafer production.
 - (iii) Example 3: Primary purpose; vertically integrated manufacturer.
 - (iv) Example 4: No primary purpose; vertically integrated manufacturer.
- (d) Applicability date.

§ 1.48D–5 Beginning of construction.

- (a) Termination of credit.
 - (1) In general.
 - (2) Property.
 - (3) Single advanced manufacturing facility project.
 - (i) In general.
 - (ii) Related taxpayers.
 - (A) Definition.
 - (B) Related taxpayer rule.
 - (iii) Example.
 - (iv) Timing of single advanced manufacturing facility project determination.
 - (v) Disaggregation.
 - (vi) Example.
 - (b) Beginning of construction.
 - (1) In general.
 - (2) Continuity requirement.
 - (c) Physical work test.
 - (1) In general.
 - (2) Physical work of significant nature.
 - (i) In general.
 - (ii) Exceptions.
 - (d) Five percent safe harbor.
 - (1) In general.
 - (2) Costs.
 - (3) Cost overruns.
 - (i) Single advanced manufacturing facility project.
 - (ii) Example.
 - (iii) Single property.
 - (iv) Example.
 - (e) Continuity requirement.
 - (1) In general.
 - (2) Continuous construction.
 - (3) Continuous efforts.
 - (4) Excusable disruptions to continuous construction and continuous efforts tests.
 - (i) In general.
 - (ii) Effect of excusable disruptions on continuity safe harbor.
 - (iii) Non-exclusive list of construction disruptions.
 - (5) Timing of excusable disruption determination.
 - (6) Continuity safe harbor.
 - (i) In general.
 - (ii) Example.

§ 1.48D–6 Elective payment election.

- (a) Elective payment election.
 - (1) In general.
 - (2) Partnerships and S corporations.
 - (3) Irrevocable.
 - (b) Pre-filing registration required.

§ 1.48D–2 Definitions.

(a) *In general.* The definitions in paragraphs (b) through (o) of this section apply for purposes of sections 48D and 50 of the Code and § 1.48D–1, this section and §§ 1.48D–3 through 1.48D–6 and 1.50–2 (the section 48D regulations).

(b) *Applicable transaction.* The term *applicable transaction* has the meaning provided in section 50(a)(6) and § 1.50–2.

(c) *Basis.*—(1) *In general.* With respect to any qualified property, the term *basis* has the same meaning as provided in § 1.46–3(c). Thus, the basis of the qualified property generally is determined in accordance with the general rules of subtitle A for determining the basis of property (see subtitle A, subchapter O, part II of the Code). As such, the basis of qualified property would generally be the cost of that qualified property (see section 1012 of the Code) unreduced by any adjustments to basis and would include all items properly included by the taxpayer in the depreciable basis of the qualified property.

(2) *Transition rule.* For property the construction of which began prior to January 1, 2023, and is placed in service after December 31, 2022, the portion of the basis of such property attributable to construction, reconstruction, or erection after August 9, 2022, must be allocated using any reasonable method, including by applying the principles of section 461 of the Code. Rules similar to the rules in §§ 1.48–2(b)(2), 1.48–11(b)(5)(i), and 1.48–12(c)(1) are applicable.

(d) *Beginning of construction.* The term *beginning of construction* has the meaning provided in § 1.48D–5.

(e) *Eligible taxpayer.* The term *eligible taxpayer* means any taxpayer that—

(1) Is not a foreign entity of concern; and

(2) Has not made an applicable transaction during the taxable year.

(f) *Foreign entities.*—(1) *Foreign entity.* The term *foreign entity* has the same meaning as provided in 15 CFR 231.103.

(2) *Foreign entity of concern.* The term *foreign entity of concern* has the same meaning as provided in 15 CFR 231.104.

(g) *Manufacturing of semiconductors.* The term *manufacturing of semiconductors* and the term *semiconductor manufacturing* are synonymous.

(h) *Manufacturing of semiconductor manufacturing equipment.* The term *manufacturing of semiconductor manufacturing equipment* means the physical production (in a manufacturing facility) of semiconductor manufacturing equipment, which is used by an advanced manufacturing

facility engaged in the manufacturing of semiconductors as defined in paragraph (g) of this section.

(i) *Placed in service.* The term *placed in service* has the same meaning as provided in § 1.46–3(d).

(j) *Qualified investment.*—(1) *In general.* Except as provided in paragraph (j)(2) and (3) of this section, the term *qualified investment* with respect to an advanced manufacturing facility means, for any taxable year, the basis of any qualified property that is part of an advanced manufacturing facility and placed in service by the taxpayer during the taxable year.

(2) *Special rules for certain passthrough entities.* In the case of any qualified property that is part of an advanced manufacturing facility of an eligible taxpayer and placed in service by an entity described in paragraphs (j)(2)(i) through (iii) of this section during a taxable year, the rules of this paragraph (j)(2) apply to determine the qualified investment for the taxable year with respect to the advanced manufacturing facility.

(i) *Partnership.* In the case of a partnership that places in service qualified property that is part of an advanced manufacturing facility of an eligible taxpayer, each partner in the partnership must take into account separately the partner's share of the basis of the qualified property placed in service by the partnership during the taxable year as provided in § 1.46–3(f).

(ii) *S corporation.* The basis of qualified property that is part of an advanced manufacturing facility of an eligible taxpayer and placed in service during the taxable year by an S corporation (as defined in section 1361(a) of the Code) must be apportioned pro rata among the S corporation's shareholders on the last day of the S corporation's taxable year as provided in section 1366.

(iii) *Estate or trust.* The basis of qualified property that is part of an advanced manufacturing facility of an eligible taxpayer and placed in service during the taxable year by an estate or trust must be apportioned among the estate or trust and its beneficiaries on the basis of the income of the estate or trust allocable to each for that taxable year.

(3) *Qualified progress expenditures election.*—(i) *In general.* A taxpayer may elect, as provided in § 1.46–5, to increase the qualified investment with respect to any advanced manufacturing facility of an eligible taxpayer for the taxable year, by any qualified progress expenditures made after August 9, 2022.

(ii) *Special rules for certain passthrough entities.* Notwithstanding

the provisions of § 1.46–5, relating to elections of progress expenditure property being constructed by or for a partnership or S corporation, the rules of § 1.46–5(o)(1) and (p) do not apply to prohibit a partnership or S corporation from making a progress expenditure election under § 1.46–5 with respect to qualified property if the partnership or S corporation intends to make an elective payment election under section 48D(d) and § 1.48D–6 with respect to a section 48D credit determined with respect to such qualified property.

(4) *Examples.* The provisions of this paragraph (j) are illustrated by the following examples.

(i) *Example 1: Advanced manufacturing investment credit: qualified investment in general.* On November 1, 2024, X, a calendar-year C corporation, places in service qualified property with a basis of \$200,000, and on December 1, 2024, X places in service qualified property with a basis of \$300,000. X's qualified investment for the taxable year is \$500,000 (\$200,000 + \$300,000).

(ii) *Example 2: Advanced manufacturing investment credit: qualified investment for partnerships.* A, B, C, and D, all calendar-year C corporations, are partners in the ABCD partnership. Partners A, B, C, and D share partnership profits equally. On November 1, 2024, the ABCD partnership placed in service qualified property with a basis of \$1 million. Each partner's share of the basis of the qualified property, as determined in § 1.46–3(f)(2), is \$250,000 (\$1m × 0.25) and each partner's qualified investment is \$250,000.

(k) *Section 48D credit.* The term *section 48D credit* means the advanced manufacturing investment credit determined under section 48D and the section 48D regulations.

(l) *Section 48D regulations.* The term *section 48D regulations* means §§ 1.48D–1 through 1.48D–6 and 1.50–2.

(m) *Semiconductor.* The term *semiconductor* means, consistent with 15 CFR 231.115, an integrated electronic device or system most commonly manufactured using materials such as, but not limited to, silicon, silicon carbide, or III–V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include, but are not limited to, analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.

(n) *Semiconductor manufacturing.* The term *semiconductor manufacturing* and the term *manufacturing of semiconductors* are synonymous and mean, consistent with 15 CFR 231.116, semiconductor wafer production, semiconductor fabrication, or semiconductor packaging. The following terms have the following

meanings in connection with semiconductor wafer production, semiconductor fabrication, and semiconductor packaging for purposes of section 48D and the section 48D regulations:

(1) *Semiconductor wafer production* includes the processes of growing single-crystal ingots and boules, wafer slicing, etching and polishing, bonding, cleaning, epitaxial deposition, and metrology.

(2) *Semiconductor fabrication* includes the process of forming devices such as transistors, poly capacitors, non-metal resistors, and diodes, as well as interconnects between such devices, on a wafer of semiconductor material.

(3) *Semiconductor packaging* means the process of enclosing a semiconductor in a protective container (package) and providing external power and signal connectivity for the assembled integrated circuit and includes the process of assembly and testing of semiconductors and advanced packaging of semiconductors.

(4) *Assembly* includes, but is not limited to, wafer-dicing, die-bonding, wire bonding, solder bumping, and encapsulation.

(5) *Testing* includes, but is not limited to, probing, screening, and burn-in work.

(6) *Advanced packaging* means a subset of packaging technologies that uses novel techniques and materials to increase the performance, power, modularity, and/or durability of an integrated circuit. Advanced packaging technologies include flip-chip, 2D, 2.5D, and 3D stacking, fan-out and fan-in, and embedded die/system-in-package (SiP).

(o) *Semiconductor manufacturing equipment*. The term *semiconductor manufacturing equipment* means the highly engineered and specialized equipment used in the manufacturing of semiconductors as defined in paragraph (g) of this section and the subsystems that enable or are incorporated into the manufacturing equipment. Specific examples of semiconductor manufacturing equipment and subsystems that enable semiconductor manufacturing equipment include but are not limited to:

(1) Deposition equipment, including, Chemical Vapor Deposition (CVD), Physical Vapor Deposition (PVD), Electrodeposition, and Atomic Layer Deposition (ALD);

(2) Etching equipment (wet etch, dry etch);

(3) Equipment for epitaxial growth of transistor features;

(4) Chemical-mechanical polishing equipment to planarize layers through the semiconductor fabrication process;

(5) Lithography equipment (steppers and scanners of various light wavelengths, such as deep UV, extreme ultraviolet (EUV), photoresist coating, and developer tracks);

(6) Equipment for producing ingots and boules, wafer growth equipment, wafer slicing equipment, wafer dicing equipment, and wire bonders;

(7) Inspection and measuring equipment, including scanning electron microscopes, atomic force microscopes, optical inspection systems, wafer probes and optical scatterometer, EDS (Energy Dispersive Spectroscopy);

(8) Certain metrology and inspection systems to measure critical dimensions of the integrated circuit features throughout the fabrication process, detection and measurement of defects on the wafers during the fabrication process;

(9) Ion implantation and diffusion/oxidation furnaces;

(10) Specialty glass components including EUV mirrors and optical pathways, lenses and mirrors used in inspection equipment and other fabrication processes, and lens assemblies for wafer defect inspection;

(11) Electrostatic chucks;

(12) High performance pumps;

(13) High purity quartz devices;

(14) Ultra-high vacuum chamber components; and

(15) Photomasks and light sources used in photolithography.

(p) *Statutory references*—(1) *Chapter 1*. The term *chapter 1* means chapter 1 of the Code.

(2) *Code*. The term *Code* means the Internal Revenue Code.

(3) *Subtitle A*. The term *subtitle A* means subtitle A of the Code.

(q) *Applicability date*. This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after October 23, 2024.

§ 1.48D–3 Qualified property.

(a) *In general*. This section provides definitions and rules relating to qualified property for purposes of section 48D of the Code and the section 48D regulations.

(b) *Qualified property*. The term *qualified property* means tangible depreciable property that is part of, and integral to, the operation of an advanced manufacturing facility and that is either—

(1) Constructed, reconstructed, or erected by the taxpayer; or

(2) Acquired by the taxpayer if the original use of such property commences with the taxpayer.

(c) *Tangible depreciable property*—(1) *In general*. The term *tangible*

depreciable property means tangible personal property (as defined in § 1.48–1(c)), other tangible property (as defined in § 1.48–1(d)), and building and structural components (as defined in § 1.48–1(e), except as provided in paragraphs (c)(2) and (3) of this section) with respect to which depreciation (or amortization in lieu of depreciation) is allowable. The law of a State or local jurisdiction is not controlling for purposes of determining whether property is tangible property for purposes of section 48D or the section 48D regulations.

(2) *Exception*. Pursuant to section 48D(b)(2)(B)(ii), except as provided in paragraph (c)(3) of this section, the term *tangible depreciable property* does not include a building and its structural components, or a portion thereof, used for—

(i) Offices;

(ii) Administrative services such as human resources or personnel services, payroll services, legal and accounting services, and procurement services;

(iii) Sales or distribution functions;

(iv) Security services (not including cybersecurity operations); or

(v) Any other functions unrelated to manufacturing of semiconductors or semiconductor manufacturing equipment.

(3) *Buildings or portions of a building not excluded by section 48D(b)(2)(B)(ii)*. Buildings or portions of a building not treated as offices and that are considered related to manufacturing of semiconductors or semiconductor manufacturing equipment include buildings or portions of a building used for:

(i) Gowning to enter to and from a cleanroom environment;

(ii) Monitoring operations and remote access of equipment;

(iii) Functions performed by unit process engineers including developing, monitoring, updating and overseeing individual process recipes running on every tool in the facility to manufacture, measure and test wafers including access to relevant data, data analysis, modifications and updates to the process recipes on the tools;

(iv) Functions performed by equipment engineers including overseeing tools to ensure proper operation by accessing data about the tool health and performance remotely adjusting the tool at workstations, and issuing work orders to the equipment and maintenance technicians from the workstations;

(v) Functions performed by test engineers including monitoring the electrical test data being collected from

the wafers at certain points in their processing;

(vi) Functions performed by yield and defect engineers including reviewing inspection data collected from wafers;

(vii) Functions performed by metrology engineers including reviewing physical measurement data collected from the wafers;

(viii) Functions performed by integration engineers that are responsible for the technology node and the end-to-end wafer process;

(ix) Functions performed by facilities engineers including monitoring and controlling facilities systems; and

(x) Functions related to central utilities buildings, material handling and ultrapure water generation facilities, and computing (data center).

(d) *Constructed, reconstructed, or erected by the taxpayer.* Property is considered constructed, reconstructed, or erected by the taxpayer if the work is done for the benefit of the taxpayer in accordance with the taxpayer's specifications.

(e) *Original use*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the term *original use* means with respect to any property the first use to which the property is put by any taxpayer in connection with a trade or business or for the production of income. Additional capital expenditures paid or incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfy the original use requirement to the extent of the expenditures paid or incurred by a taxpayer. However, a taxpayer's cost to acquire property reconditioned or rebuilt by another taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property will be determined based on the facts and circumstances.

(2) *Treatment of inventory.* For purposes of paragraph (e)(1) of this section, if a taxpayer initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the taxpayer's trade or business and subsequently withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the person's business and a taxpayer subsequently acquires the property from the person for use primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user

of the property. For purposes of this paragraph (e), the original use of the property by the taxpayer commences on the date on which the taxpayer first uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income.

(f) *Part of an advanced manufacturing facility*—(1) *In general.* To qualify for the section 48D credit, property must be part of the advanced manufacturing facility, as provided in this paragraph (f). Property is part of an advanced manufacturing facility if the property is physically located or co-located either at the advanced manufacturing facility, or on a contiguous piece of land to the advanced manufacturing facility. Parcels or tracts of land will be considered contiguous if they possess common boundaries, and would be contiguous but for the interposition of a road, street, railroad, public utility, stream or similar property.

(2) *Property that is not located or co-located at an advanced manufacturing facility or on a contiguous piece of land to the advanced manufacturing facility.* Property that is not located or co-located at an advanced manufacturing facility or on a contiguous piece of land to the advanced manufacturing facility may be considered part of the advanced manufacturing facility if the property is owned by the same taxpayer as the entire advanced manufacturing facility, connected to the advanced manufacturing facility (e.g., via pipeline) and the sole purpose, function, and output of the property is dedicated to the operation of the advanced manufacturing facility.

(g) *Integral to the operation of an advanced manufacturing facility*—(1) *In general.* To qualify for the section 48D credit, property must be integral to the operation of manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment, both as provided in § 1.48D-2. Property is integral to the operation of manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment if such property is used directly in the manufacturing operation, is essential to the completeness of the manufacturing operation, and is not transformed in any material way as a result of the manufacturing operation. Materials, supplies, and other inventoriable items of property that are transformed during the manufacturing of semiconductors or into a unit of semiconductor manufacturing equipment are not considered property integral to the operation of an advanced manufacturing facility. For this purpose, the term *transform* does not include the normal

degradation of components of semiconductor manufacturing equipment. In addition, property such as pavements, parking areas, inherently permanent advertising displays, or inherently permanent outdoor lighting facilities, although used in the operation of a business, ordinarily are not integral to the operation of an advanced manufacturing facility. Thus, for example, all property used by the taxpayer to acquire or transport materials or supplies to the point where the actual manufacturing activity commences (such as docks, railroad tracks, and bridges), or all property (other than materials or supplies) used by the taxpayer during the manufacturing of semiconductors or during the manufacturing of semiconductor manufacturing equipment within the meaning of § 1.48D-2, would be considered property integral to the operation of an advanced manufacturing facility of an eligible taxpayer. Property is considered integral to the operation of an advanced manufacturing facility of an eligible taxpayer if so used either by the owner of the property or by a lessee of the property.

(2) *Vertically integrated manufacturers.* If an advanced manufacturing facility that is engaged in the manufacturing of semiconductors within the meaning of § 1.48D-2 also conducts vertically integrated activities (for example, producing raw materials and manufacturing, ingots, wafers, and semiconductors), then property integral to the operation of such an advanced manufacturing facility includes only the property used in the manufacturing of semiconductors within the meaning of § 1.48D-2.

(3) *Specific examples of integral property.* Specific examples of property that normally would be integral to the operation of the advanced manufacturing facility of an eligible taxpayer are:

(i) Equipment and tools used in the processes of Chemical Vapor Deposition (CVD), and Physical Vapor Deposition (PVD), Atomic Layer deposition (ALD), oxidation, annealing, and epitaxy. Such equipment includes Deposition and thin-film growth equipment, etching equipment, and lithography equipment (including Extreme Ultraviolet Lithography (EUV));

(ii) Wet process tools, analytical tools, E-Beam operation tools (to repair masks), mask manufacturing equipment, chemical mechanical polishing equipment, reticle handlers, and stockers;

(iii) Inspection and metrology equipment, including scanning electron

microscopes, atomic force microscopes, ion milling tools, optical inspection systems, wafer probes and optical scatterometer;

(iv) Clean room facilities, including locker and gowning rooms, specialized lighting systems, automated material systems for wafer handling, specialized recirculating air handlers, to maintain the cleanroom free from particles, control temperature and humidity levels, and specialized ceilings comprised of HEPA filters;

(v) Cleanroom equipment (including jogs, hand tools, calibration equipment, and temperature pollution monitoring tools) and specialty cleaning equipment;

(vi) Electrical power facilities, cooling facilities, chemical supply systems, and wastewater and wastewater treatment systems, including water management, water conservation, and water treatment equipment, materials and technologies;

(vii) Electricity distribution equipment including connectors, capacitors, meters and sockets, switchgear, surge arresters and transformers;

(viii) Sub-fab levels containing pumps, transformers, abatement systems, ultrapure water systems, uninterruptible power supply, and boilers, pipes, storage systems, wafer routing systems and databases, backup systems, quality assurance equipment, and computer data centers;

(ix) Utility level equipment including chillers, systems to handle nitrogen, argon, and other gases, compressor systems, and pipes;

(x) Industrial automation and control equipment (including, but not limited to, programmable logic controllers, process controllers, distributed control systems, human machine interface and motor controls and accessories);

(xi) Industrial automation communications devices, networks, and software for industrial automation control products and systems including automated material handling systems (AMHS) and advance wafer routing software systems and databases;

(xii) Tooling equipment;

(xiii) Back-end manufacturing equipment related to assembly, testing, and packaging;

(xiv) Photolithography tools;

(xv) Photomasks, reticles, pellicle, steppers, scanners, and photoresist related equipment;

(xvi) Emulation tools;

(xvii) Rapid thermal processing tools (annealing tubs and vacuum ovens), melting laser annealing (MLA) equipment, wafer bonding equipment, physical removal processing tools (flycutter DieSaw and backgrind), and edge seal dispense;

(xviii) Site infrastructure including but limited to energy, water, natural gas, backup power generators, transformers, stormwater management and fire protection;

(xix) Equipment and installation (wipe-film evaporators);

(xx) Chemical and gas delivery systems (piping, storage, and waste systems including hazardous waste);

(xxi) Bulk chemical purification systems (Liquid N₂, Ar, H₂, etc.);

(xxii) HVAC air conditioning and air handling systems, critical cooling water systems and heating systems;

(xxiii) Wafer stockers with temperature and air quality control;

(xxiv) Temperature control systems;

(xxv) Security and monitoring system and devices;

(xxvi) Failure analysis labs and equipment;

(xxvii) Quality assurance equipment including incoming goods, in-process inspection, and finished-good inspection;

(xxviii) Transportation, trolleys and carts that are used to transport wafers or overhead conveyer systems to move the carts;

(xxxix) Lighting products;

(xxx) Industrial gas generation and/or handling systems, such as air separation units, including any associated backup and storage equipment;

(xxxi) Input shaping tooling;

(xxxii) Crystal formation and coating equipment;

(xxxiii) Mechanical equipment; and

(xxxiv) Polishing equipment.

(4) *Research or storage facilities.* If property, including a building and its structural components, constitutes a research or storage facility and is used in connection with the manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment, the property may qualify as integral to the operation of the advanced manufacturing facility under section 48D(b)(2)(A)(iv). Specific examples of research facilities include research facilities that manufacture semiconductors in connection with research, such as pre-pilot production lines and prototypes, including semiconductor packaging. Specific examples of storage facilities are mineral or chemical storage equipment, gas storage tanks, including high pressure cylinders or specially designed tanks and drums, wastewater storage, and inventory and finished goods warehouses. A research facility that does not manufacture any type of semiconductor, as provided in § 1.48D–2(m), or semiconductor manufacturing equipment, as provided in § 1.48D–2(o), does not qualify.

(5) *Examples.* The following examples illustrate the rules of this paragraph (g):

(i) *Example 1.* X Corp, a calendar-year C corporation, is a manufacturer of air separation units that are designed to supply on demand nitrogen to an advanced manufacturing facility. In January 2025, X Corp places in service an air separation unit that is co-located at an advanced manufacturing facility on a contiguous piece of land to the advanced manufacturing facility. The air separation unit produces nitrogen on demand, and the nitrogen is used directly in the manufacturing of semiconductors. The air separation unit is part of the advanced manufacturing facility within the meaning of paragraph (f) of this section because the air separation unit is located on a contiguous piece of land to the advanced manufacturing facility. The air separation unit is property integral to the operation of an advanced manufacturing facility under this paragraph (g) because it is used directly in, and is essential to, the completeness of the semiconductor manufacturing operation, and is not transformed in any material way as a result of the semiconductor manufacturing operation.

(ii) *Example 2.* Y Corp, a calendar-year C corporation, is a manufacturer of specialty chemicals that are used in the manufacturing of semiconductors. In 2025, Y Corp places in service equipment at its facility that manufactures the specialty chemicals. The equipment is located five miles from the advanced manufacturing facility, but is not part of the advanced manufacturing facility within the meaning of paragraph (f) of this section because it is not located or co-located at the advanced manufacturing facility, or on a contiguous piece of land to the advanced manufacturing facility, and it is not connected to the advanced manufacturing facility. Also in 2025, Y Corp places in service chemical storage tanks that are part of the advanced manufacturing facility within the meaning of paragraph (f) of this section because the property is located on a contiguous piece of land to the advanced manufacturing facility. The chemical storage tanks are property integral to the operation of the advanced manufacturing facility pursuant to paragraph (g) of this section.

(h) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after October 23, 2024.

§ 1.48D–4 Advanced manufacturing facility of an eligible taxpayer.

(a) *In general.* This section provides definitions and rules relating to advanced manufacturing facilities of eligible taxpayers for purposes of section 48D of the Code and the section 48D regulations.

(b) *Advanced manufacturing facility.* For purposes of section 48D(b)(3) and this section, the term *advanced manufacturing facility* means a facility of an eligible taxpayer for which the

primary purpose, as determined under paragraph (c)(1) of this section, is the manufacturing of semiconductors or the manufacturing of semiconductor manufacturing equipment within the meaning of § 1.48D–2.

(c) *Primary purpose*—(1) *In general.* The determination of the *primary purpose* of a facility will be made based on all the facts and circumstances surrounding the construction, reconstruction, or erection of the advanced manufacturing facility of an eligible taxpayer. Facts that may indicate a facility has a primary purpose of manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment include plans or other documents for the facility that demonstrate that the facility is designed for the manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment within the meaning of § 1.48D–2. Facts may also include the possession of permits or licenses needed for the manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment; and executed contracts to a customer to supply such semiconductors or executed contracts to an advanced manufacturing facility as defined in paragraph (b) of this section to supply such semiconductor manufacturing equipment in place either before or within 6 months after the facility is placed in service. A facility has the primary purpose of manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment if more than 50 percent of its potential output, as measured by cost to produce, revenue received in an arm's length transaction, or units produced, constitutes manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment within the meaning of § 1.48D–2. However, property placed in service in a taxable year must still meet the definition of qualified property under section 48D(b)(2) and § 1.48D–3 for its basis to be included as part of the qualified investment in the advanced manufacturing facility eligible for the section 48D credit. For example, property that is not integral to the operation of an advanced manufacturing facility as provided in § 1.48D–3(g) may not be included as a qualified investment in an advanced manufacturing facility.

(2) *No primary purpose.* A facility for which the primary purpose is the manufacturing, producing, growing, or extracting of materials or chemicals that are supplied to an advanced

manufacturing facility is not a facility for which the primary purpose is the manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment. Thus, for example, facilities that exclusively produce semiconductor-grade polysilicon, or produce gases, or that manufacture components or parts, to supply to an advanced manufacturing facility engaged in the manufacturing of semiconductors or manufacturing of semiconductor manufacturing equipment are not facilities for which the primary purpose is the manufacturing of semiconductors or the manufacturing of semiconductor manufacturing equipment.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

(i) *Example 1: Primary purpose; in general.* In January 2025, X Corp, a calendar-year C corporation, begins construction of a facility that will manufacture semiconductor manufacturing equipment that could be used in a facility that will engage in semiconductor fabrication (semiconductor fabrication facility). A portion of the equipment produced, however, could be used for manufacturing operations of a facility that is not engaged in semiconductor manufacturing. X Corp enters into a contract with Y Corp, which is building a semiconductor fabrication facility to be placed in service in July 2026, to supply Y Corp with equipment that is integral to semiconductor fabrication. Such equipment represents more than 50 percent of the potential output of X Corp's facility (by cost to produce such equipment) of X Corp's facility for the first year of operations. X Corp's facility will be considered as having a primary purpose of manufacturing of semiconductor manufacturing equipment for the first year of its operations.

(ii) *Example 2: Primary purpose; semiconductor wafer production.* X Corp, a calendar-year C corporation, is engaged in the production of solar wafers (that is, X Corp is engaged in semiconductor wafer production). In January 2025, X Corp receives the necessary permits to begin construction of a facility designed for semiconductor wafer production within the meaning of § 1.48D–2. X Corp enters into a contract to supply such wafers to an unrelated person. Such contract represents more than 50 percent of X Corp's potential output (by revenue received) for the tax year that the facility is placed in service. Because the contract to sell wafers represents more than 50 percent of X Corp's potential output (by revenue received), X Corp's facility will be considered as having a primary purpose of semiconductor wafer production within the meaning of paragraph (c)(1) of this section.

(iii) *Example 3: Primary purpose; vertically integrated manufacturer.* Z Corp, a C corporation, is a vertically integrated manufacturer. In January 2025, Z Corp begins construction of a facility that will produce raw materials and other consumables for use in the manufacturing of semiconductors and such facility will also engage in

semiconductor wafer production and semiconductor fabrication. Z Corp enters into separate sales contracts to sell units produced from the semiconductor fabrication with a variety of unrelated companies that are engaged in semiconductor packaging. Z Corp also enters into a sales contract with A Corp to sell raw materials that it produces at the facility to A Corp. Z Corp's production of units from its semiconductor fabrication sold to companies engaged in semiconductor packaging represents more than 50 percent of the potential output (by cost) of Z Corp's facility for the first year of operations; therefore, Z Corp's facility will be considered as having a primary purpose of manufacturing of semiconductors.

(iv) *Example 4: No primary purpose; vertically integrated manufacturer.* Assume the same facts as in paragraph (c)(3)(iii) of this section (*Example 3*), except that Z Corp's production of such raw materials represents more than 50 percent of the potential output of Z Corp's facility for the first year of operations. Z Corp's facility will not be considered as having a primary purpose of manufacturing of semiconductors.

(d) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or October 23, 2024.

§ 1.48D–5 Beginning of construction.

(a) *Termination of credit*—(1) *In general.* The credit allowed under section 48D of the Code and the section 48D regulations does not apply to property that is part of an advanced manufacturing facility of an eligible taxpayer if the beginning of construction of the property, as defined in paragraph (a)(2) of this section, begins after December 31, 2026 (the date specified in section 48D(e)).

(2) *Property.* For purposes of determining beginning of construction of property under this section, the unit of property is—

(i) A single advanced manufacturing facility project as described in paragraph (a)(3) of this section; or

(ii) An item of qualified property (as defined in § 1.48D–3(b)).

(3) *Single advanced manufacturing facility project*—(i) *In general.* Solely for purposes of determining whether construction of a qualified property has begun for purposes of section 48D and the section 48D regulations, multiple items of qualified property or advanced manufacturing facilities that are operated as part of a single advanced manufacturing facility project (along with any items of property, such as clean rooms, chemical delivery systems, chemical storage facilities, temperature control systems, robotic handling systems, semiconductor manufacturing equipment, and tooling equipment (such as for deposition and etching) that

are integral to the operation of the single advanced manufacturing facility project) will be treated as a single item of qualified property. Multiple qualified properties or advanced manufacturing facilities will be treated as operated as part of a single advanced manufacturing facility project, if at any point during construction of the multiple qualified properties or advanced manufacturing facilities, they are owned by a single taxpayer (subject to the related taxpayer rule provided in paragraph (a)(3)(ii) of this section) and any two or more of the following factors are present—

(A) The properties or facilities are owned by a single legal entity;

(B) The properties or facilities are constructed on contiguous pieces of land;

(C) The properties or facilities are described in a common supply contract or other type of relevant contract;

(D) The properties or facilities share a common electricity and/or water supply;

(E) The properties or facilities are described in one or more common environmental or other regulatory permits;

(F) The properties or facilities were constructed pursuant to a single master construction contract; or

(G) The construction of the properties or facilities was financed pursuant to the same loan agreement or other financing arrangement.

(ii) *Related taxpayers*—(A) *Definition*. For purposes of this section, the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)).

(B) *Related taxpayer rule*. For purposes of this section, related taxpayers are treated as one taxpayer in determining whether multiple qualified properties or advanced manufacturing facilities will be treated as operated as part of a single advanced manufacturing facility project.

(iii) *Example*. A single taxpayer is developing Project C, a project that will consist of 3 advanced manufacturing facilities constructed on the same campus. Project C will share a common electricity supply, and semiconductors manufactured by Project C will be sold to Buyer through a single supply contract. In 2023, for 1 of the 3 advanced manufacturing facilities, the taxpayer installs deposition equipment. Thereafter, the taxpayer completes the construction of all 3 advanced manufacturing facilities pursuant to a continuous program of construction. For purposes of the section 48D credit, Project C is a single advanced manufacturing facility project that will

be treated as a single property, and the taxpayer performed physical work of a significant nature that constitutes the beginning of construction of Project C in 2023.

(iv) *Timing of single advanced manufacturing facility project determination*. Whether multiple properties or advanced manufacturing facilities are operated as part of a single advanced manufacturing facility project and are treated as a single item of property for purposes of the beginning of construction requirement of section 48D and the section 48D regulations is determined in the taxable year during which the last of the multiple properties or facilities is placed in service.

(v) *Disaggregation*. Multiple properties or advanced manufacturing facilities that are operated as part of a single advanced manufacturing facility project and treated as a single item of qualified property under this paragraph (a)(3) for purposes of determining whether construction of a qualified property or advanced manufacturing facility has begun may be disaggregated and treated as separate items of qualified property for purposes of determining whether a separate advanced manufacturing facility or item of qualified property satisfies the continuity safe harbor (as defined in paragraph (e) of this section). Those disaggregated separate advanced manufacturing facilities or items of qualified property that are placed in service prior to the continuity safe harbor deadline will be eligible for the continuity safe harbor. The remaining disaggregated separate items of property or facilities may satisfy the continuity requirement under a facts and circumstances determination.

(vi) *Example*. A single taxpayer is developing Project D, a project that will consist of 4 separate properties. Project D will use the same water supply and each property within Project D will be constructed pursuant to a single master construction contract. Under the single project rule provided in this paragraph (a)(3), Project D is a single project that will be treated as a single property. In 2024, for 3 of the 4 separate properties, the taxpayer installs property integral to the operation of the advanced manufacturing facility. Accordingly, the taxpayer has performed physical work of a significant nature that constitutes the beginning of construction of Project D for purposes of section 48D(e). Thereafter, on the last day of the 10-year continuity safe harbor period, the taxpayer places in service only 3 of the 4 separate properties within Project D. The taxpayer disaggregates Project D under paragraph (a)(3)(v) of this section

and accordingly, only 3 of the 4 separate properties satisfy the continuity safe harbor. For the remaining 1 separate property, the taxpayer may demonstrate that it satisfies the continuity requirement provided in paragraph (e) of this section based on the facts and circumstances, to enable the taxpayer to claim the section 48D credit.

(b) *Beginning of construction*—(1) *In general*. For purposes of section 48D, the section 48D regulations, and section 107(f)(1) of the CHIPS Act of 2022, Public Law 117–167, div. A, 136 Stat. 1366, 1399 (August 9, 2022), a taxpayer may establish that construction of an item of property (as defined in paragraph (a)(2) of this section) of the taxpayer begins under either:

(i) The physical work test of paragraph (c) of this section; or

(ii) The five percent safe harbor of paragraph (d) of this section.

(2) *Continuity requirement*. See paragraph (e) of this section for the continuity requirement applicable for purposes of the physical work test and the five percent safe harbor, which must be demonstrated either by maintaining continuous construction (as defined in paragraph (e)(2) of this section) or continuous efforts (as defined in paragraph (e)(3) of this section).

(c) *Physical work test*—(1) *In general*. Under the physical work test, construction of an item of property begins when physical work of a significant nature begins, provided thereafter that the taxpayer maintains continuous construction or continuous efforts. This test focuses on nature of the work performed, not the amount of the costs. Assuming the work performed is of a significant nature, there is no fixed minimum amount of work, monetary or percentage threshold required to satisfy the physical work test.

(2) *Physical work of significant nature*—(i) *In general*. Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in the taxpayer's trade or business of manufacturing semiconductors or semiconductor manufacturing equipment is taken into account in determining whether physical work of a significant nature has begun. Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. A written contract is binding only if it is enforceable under local law against the

taxpayer or a predecessor and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least five percent of the total contract price will not be treated as limiting damages to a specified amount. For additional guidance regarding the definition of a binding written contract, *see* § 1.168(k)-1(b)(4)(ii)(A) through (D). Specific examples of on-site physical work of a significant nature include the excavation for the foundation and the pouring of the concrete pads of the foundation. Specific examples of off-site physical work of a significant nature include the manufacture of semiconductor manufacturing equipment but only if the manufacturer's work is done pursuant to a binding written contract and the semiconductor manufacturing equipment is not held in the manufacturer's inventory.

(ii) *Exceptions.* Physical work of significant nature does not include preliminary activities, including but not limited to planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, or clearing a site, even if the cost of those preliminary activities is properly included in the depreciable basis of the property. Physical work of a significant nature also does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.

(d) *Five percent safe harbor*—(1) *In general.* Construction of a property will be considered as having begun if:

(i) A taxpayer pays or incurs (within the meaning of § 1.461-1(a)(1) and (2)) five percent or more of the total cost of the property; and

(ii) Thereafter, the taxpayer maintains continuous construction or continuous efforts.

(2) *Costs.* All costs properly included in the basis of the property are taken into account to determine whether the five percent safe harbor has been met. For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of section 461 of the Code.

(3) *Cost overruns*—(i) *Single advanced manufacturing facility project.* If the total cost of a property that is a single advanced manufacturing facility project comprised of multiple properties (as described in paragraph (a)(3) of this section) exceeds its anticipated total cost such that the amount the taxpayer actually paid or incurred with respect to the single advanced manufacturing facility project to establish the beginning of its construction under paragraph (b)(1)(ii) of this section is less than five percent of the total cost at the time it is placed in service, the five percent safe harbor is not fully satisfied. However, the five percent safe harbor will be satisfied with respect to some, but not all, of the separate properties or facilities (as described in paragraph (a)(3) of this section) comprising the single advanced manufacturing facility project, as long as the total aggregate cost of those properties is not more than twenty times greater than the amount the taxpayer paid or incurred.

(ii) *Example.* In 2023, taxpayer incurs \$300,000 in costs to construct Project A, comprised of six advanced manufacturing facilities that will be operated as a single project. Taxpayer anticipates that each advanced manufacturing facility will cost \$1,000,000 for a total cost for Project A of \$6,000,000. Thereafter, the taxpayer makes continuous efforts to advance towards completion of Project A. The taxpayer timely places Project A in service in 2025. In 2025, the actual total cost of Project A amounts to \$7,500,000, with each advanced manufacturing facility costing \$1,250,000. Although the taxpayer did not pay or incur five percent of the actual total cost of Project A in 2023, the taxpayer will be treated as satisfying the Five Percent Safe Harbor in 2023 with respect to four of the advanced manufacturing facilities, as their actual total cost of \$5,000,000 is not more than twenty times greater than the \$300,000 in costs incurred by the taxpayer. The taxpayer will not be treated as satisfying the five percent safe harbor in 2023 with respect to two of the properties. Thus, the taxpayer may claim the section 48D credit based on \$5,000,000, the cost of four of the properties.

(iii) *Single property.* If the total cost of a single property, which is not part of a single advanced manufacturing facility project comprised of multiple properties or facilities (as described in paragraph (a)(3) of this section) and cannot be separated into multiple properties or facilities, exceeds its anticipated total cost so that the amount a taxpayer actually paid or incurred with respect to the single property as of an earlier year

is less than five percent of the total cost of the single property at the time it is placed in service, then the taxpayer will not satisfy the five percent safe harbor with respect to any portion of the single property in such earlier year.

(iv) *Example.* In 2023, a taxpayer incurs \$250,000 in costs to construct Project B, a single property. The taxpayer anticipates that the total cost of Project B will be \$5,000,000. Thereafter, the taxpayer makes continuous efforts to advance towards completion of Project B. The taxpayer places Project B in service in a later year. At that time, its actual total cost amounts to \$6,000,000. Because Project B is a single property that is not a single project comprised of multiple properties, the taxpayer will not satisfy the five percent safe harbor as of 2023. However, if the construction of Project B satisfies the requirements of the physical work test by also beginning physical work of a significant nature in 2024, the taxpayer may be able to demonstrate that construction began in 2024.

(e) *Continuity requirement*—(1) *In general.* For purposes of the physical work test and five percent safe harbor, taxpayers must satisfy the *continuity requirement* by demonstrating either continuous construction or continuous efforts regardless of whether the physical work test or the five percent safe harbor was used to establish the beginning of construction. Whether a taxpayer meets the continuity requirement under either test is determined by the relevant facts and circumstances. The Commissioner will closely scrutinize a property and may determine that the beginning of construction is not satisfied with respect to a property if a taxpayer does not meet the continuity requirement.

(2) *Continuous construction.* The term *continuous construction* means a continuous program of construction that involves continuing physical work of a significant nature. Whether a taxpayer maintains a continuous program of construction to satisfy the continuity requirement will be determined based on all the relevant facts and circumstances.

(3) *Continuous efforts.* The term *continuous efforts* means continuous efforts to advance towards completion of a property to satisfy the continuity requirement. Whether a taxpayer makes continuous efforts to advance towards completion of a property will be determined by the relevant facts and circumstances. Facts and circumstances indicating continuous efforts to advance towards completion of a property may include:

(i) Paying or incurring additional amounts included in the total cost of the property. A taxpayer is considered to meet this factor for a taxable year in which it pays or incurs (within the meaning of § 1.461–1(a)(1) and (2)) five percent or more of the total cost of the property each calendar year after the calendar year during which construction of the property began for purposes of section 48D and the section 48D regulations;

(ii) Entering into binding written contracts for the manufacture, construction, or production of the property or for future work to construct the property;

(iii) Obtaining necessary permits; and

(iv) Performing physical work of a significant nature.

(4) *Excusable disruptions to continuous construction and continuous efforts tests*—(i) *In general.* Certain disruptions in a taxpayer's continuous construction or continuous efforts to advance towards completion of a property that are beyond the taxpayer's control will not be considered as indicating that a taxpayer has failed to satisfy the continuity requirement.

(ii) *Effect of excusable disruptions on continuity safe harbor.* The excusable disruptions provided in this paragraph (e)(4) will not extend the continuity safe harbor deadline that is provided in paragraph (e)(6) of this section.

(iii) *Non-exclusive list of construction disruptions.* This paragraph (e)(4)(iii) provides a non-exclusive list of construction disruptions that will not be considered as indicating that a taxpayer has failed to satisfy the continuity requirement:

(A) Delays due to severe weather conditions.

(B) Delays due to natural disasters.

(C) Delays in obtaining permits or licenses from Federal, Indian Tribal, State, territorial, or local governments. Such delays include delays in obtaining air emissions, water discharge, or hazardous waste management permits or chemical handling licenses from the Environmental Protection Agency (EPA) or another environmental protection authority. Such delays also include delays as a result of the review process under State, Tribal, local, or Federal environmental laws, for example, a review under the National Environmental Policy Act, as well as delays in obtaining construction permits.

(D) Delays at the written request of a Federal, State, local, or Indian Tribal government regarding matters of public health, public safety, security, or similar concerns, including hazardous chemical transport.

(E) Delays related to electrical or water supply, such as those relating to the completion of construction on a distribution line or water supply line that may be associated with a project's electrical and water needs, whether constructed by the eligible taxpayer that is the owner of the advanced manufacturing facility, a governmental entity, or another person.

(F) Delays in the manufacture of custom components or equipment.

(G) Delays due to the inability to obtain specialized equipment of limited availability.

(H) Delays due to supply shortages.

(I) Delays due to the presence of endangered species.

(J) Financing delays.

(K) Delays due to specialized labor shortages or labor stoppages.

(5) *Timing of excusable disruption determination.* In the case of a single advanced manufacturing facility project comprised of a single property, whether an excusable disruption has occurred for purposes of the beginning of construction requirement of section 48D and the section 48D regulations must be determined in the taxable year during which the property is placed in service. In the case of a single advanced manufacturing facility project comprised of multiple properties or facilities, whether an excusable disruption has occurred for purposes of the beginning of construction requirement of section 48D and the section 48D regulations must be determined in the taxable year during which the last of multiple properties or facilities is placed in service.

(6) *Continuity safe harbor*—(i) *In general.* A taxpayer will be deemed to satisfy the continuity requirement provided the property is placed in service no more than 10 calendar years after the calendar year during which construction of the property began for purposes of section 48D and the section 48D regulations.

(ii) *Example.* If construction begins on a property on January 15, 2023, and the property is placed in service by December 31, 2033, the property will be considered to satisfy the continuity safe harbor. If the property is not placed in service before January 1, 2034, whether the continuity requirement was satisfied will be determined based on all the relevant facts and circumstances.

(f) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after October 23, 2024.

■ **Par. 4.** Section 1.50–0 is added to read as follows:

§ 1.50–0 Table of contents.

This section lists the table of contents for §§ 1.50–1 and 1.50–2.

§ 1.50–1 *Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.*

- (a) In general.
- (b) Coordination with basis adjustment rules.
 - (1) Basis adjustment.
 - (2) Amount of credit included ratably in gross income.
 - (i) In general.
 - (ii) Special rule for the energy credit.
 - (3) Special rule for partnerships and S corporations.
 - (i) In general.
 - (ii) Definition of ultimate credit claimant.
 - (c) Coordination with the recapture rules.
 - (1) In general.
 - (2) Income inclusion exceeds unrecaptured credit.
 - (3) Special rule for the energy credit.
 - (4) Timing of income inclusion or reduction following recapture.
 - (d) Election to accelerate income inclusion outside of the recapture period.
 - (1) In general.
 - (2) Exceptions.
 - (3) Manner and time for making election.
 - (e) Examples.
 - (1) Example 1.
 - (2) Example 2.
 - (3) Example 3.
 - (4) Example 4.
 - (5) Example 5.
 - (6) Example 6.
 - (f) Applicability date.

§ 1.50–2 *Recapture of the advanced manufacturing investment credit in the case of certain expansions.*

- (a) Recapture in connection with certain expansions.
 - (1) In general.
 - (2) Exception.
 - (3) Carrybacks and carryover adjusted.
- (b) Definitions.
 - (1) Applicable period.
 - (2) Applicable taxpayer.
 - (i) In general.
 - (ii) Special rules for partnerships and S corporations and their partners and shareholders.
 - (iii) Examples.
 - (A) Example 1: Applicable taxpayer: In general.
 - (B) Example 2: Applicable taxpayer: In general.
 - (C) Example 3: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.
 - (D) Example 4: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.
 - (E) Example 5: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.
 - (F) Example 6: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.
 - (iv) Affiliated groups.
 - (3) Applicable transaction.

- (4) Applicable transaction recapture amount.
- (5) Existing facility.
- (6) Foreign country of concern.
- (7) Material expansion.
- (8) Semiconductor manufacturing capacity.
- (9) Significant renovations.
- (10) Significant transaction.
- (i) In general.
- (ii) Required agreement.
- (11) Technology licensing.
- (12) Technology or product that raises national security concerns.
- (c) Exception from the definition of applicable transaction for the manufacturing of legacy semiconductors.
- (1) In general.
- (2) Legacy semiconductor.
- (d) Example: Applicable transaction credit claimed.
- (e) Applicability date.

■ **Par. 5.** Section 1.50–2 is added to read as follows:

§ 1.50–2 Recapture of the advanced manufacturing investment credit in the case of certain expansions.

(a) *Recapture in connection with certain expansions*—(1) *In general.* Except as provided in section 50(a)(3)(B) of the Code and paragraph (a)(2) of this section, if an applicable taxpayer engages in an applicable transaction before the close of the applicable period, then the tax under chapter 1 for the taxable year in which such transaction occurs is increased by 100 percent of the applicable transaction recapture amount. Any taxpayer, including an applicable taxpayer, that engages in an applicable transaction during a taxable year does not meet the definition of an eligible taxpayer under section 48D(c) and the section 48D regulations and is ineligible for the section 48D credit for that taxable year. See paragraph (b) of this section for definitions of terms used in section 50(a)(3) and this section.

(2) *Exception.* Section 50(a)(3)(A) and paragraph (a)(1) of this section do not apply if the applicable taxpayer demonstrates to the satisfaction of the Commissioner that the applicable transaction has been ceased or abandoned within 45 days of a determination and notice by the Commissioner. A taxpayer that ceases or abandons a particular applicable transaction for a taxable year may still be treated as engaging in a different applicable transaction for a taxable year. A taxpayer may not circumvent the application of section 50(a)(3) and this section by engaging in a series of applicable transactions, multiple applicable transactions, or other similar arrangements.

(3) *Carrybacks and carryover adjusted.* In the case of any cessation described in section 50(a)(1) or (2), or any applicable transaction to which

section 50(a)(3) and paragraph (a)(1) of this section apply, any carryback or carryover under section 39 of the Code is appropriately adjusted by reason of such cessation or applicable transaction.

(b) *Definitions.* The following definitions apply for purposes of section 50(a)(3) and this section.

(1) *Applicable period.* The term *applicable period* means the 10-year period beginning on the date that an applicable taxpayer placed in service property that is eligible for the section 48D credit.

(2) *Applicable taxpayer*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the term *applicable taxpayer* means any taxpayer who was allowed a section 48D credit or made an election under section 48D(d)(1) with respect to such credit, for any taxable year prior to the taxable year in which such taxpayer entered into an applicable transaction.

(ii) *Special rules for partnerships and S corporations and their partners and shareholders.* In the case of qualified property placed in service by a partnership or an S corporation for which a section 48D credit was determined, the term *applicable taxpayer* also means—

(A) The partnership and the partners of such partnership (directly or indirectly through one or more tiered partnerships) who were allowed a section 48D credit for such property, or S corporation and the shareholder(s) of such S corporation who were allowed a section 48D credit for such property, for any taxable year prior to the taxable year in which such partnership or S corporation entered into an applicable transaction;

(B) Any partner in a partnership (directly or indirectly through one or more tiered partnerships) or any shareholder in an S corporation with respect to the partner's or S corporation shareholder's share of any section 48D credit allowed for such property for any taxable year prior to when such partner or S corporation shareholder entered into an applicable transaction;

(C) Any partnership or S corporation that made an election under section 48D(d)(2) with respect to a credit determined under section 48D(a)(1) for any taxable year prior to the taxable year in which such partnership or S corporation entered into an applicable transaction; and

(D) Any partner in a partnership (directly or indirectly through one or more tiered partnerships) or shareholder in an S corporation with respect to the partner's or S corporation shareholder's share of any tax-exempt income from the partnership or S corporation that

made an election under section 48D(d)(2) for any taxable year prior to when such partner or shareholder entered into an applicable transaction.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(2).

(A) *Example 1: Applicable taxpayer: In general.* On July 1, 2026, X Corp, a calendar-year C corporation, entered into an applicable transaction. In 2025, X Corp had placed in service qualified property that is part of an advanced manufacturing facility and was allowed a section 48D credit for its 2025 taxable year. X Corp is an applicable taxpayer when it entered into the applicable transaction.

(B) *Example 2: Applicable taxpayer: In general.* The facts are the same as in paragraph (b)(2)(iii)(A) of this section (*Example 1*), except that X timely filed its 2025 tax return properly making an election under section 48D(d)(1) with respect to the section 48D credit. X Corp is an applicable taxpayer when it entered into the applicable transaction.

(C) *Example 3: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.* A, B, C, and D, all calendar-year C corporations, are partners in the ABCD partnership. Partners A, B, C, and D share partnership profits equally. On May 1, 2027, the ABCD partnership engages in an applicable transaction. On November 1, 2025, the ABCD partnership had placed in service qualified property with a basis of \$1 million. Each partner's share of the basis of the qualified property, as determined in § 1.46–3(f)(2), is \$250,000 (\$1m x 0.25) and each partner's qualified investment is \$250,000. A, B, C, and D each filed its 2025 tax return claiming a section 48D credit. The ABCD partnership and A, B, C, and D each are an applicable taxpayer when ABCD partnership enters into the applicable transaction.

(D) *Example 4: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.* The facts are the same as in paragraph (b)(2)(iii)(C) of this section (*Example 3*), except that on May 1, 2027, A, and not ABCD partnership, engages in an applicable transaction. A is an applicable taxpayer with respect to A's share of the section 48D credit when A enters into the applicable transaction. Neither the ABCD partnership nor partners B, C, nor D are an applicable taxpayer with respect to the applicable transaction entered into by A.

(E) *Example 5: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.* The facts are the same as in paragraph (b)(2)(iii)(C) of this section (*Example 3*), except that A, B, C and D do not claim a section 48D credit on their timely filed 2025 tax returns. Instead, the ABCD partnership makes an election pursuant to section 48D(d)(2) with respect to the section 48D credit determined under section 48D(a)(1). The ABCD partnership is an applicable taxpayer with respect to the elective payment to the ABCD partnership pursuant to section 48D(d)(2)(A)(i)(I).

(F) *Example 6: Applicable taxpayer: Special rules for partnerships and S corporations and their partners and shareholders.* The facts are the same as in paragraph (b)(2)(iii)(E) of this section (*Example 5*), except that the ABCD partnership did not engage in an applicable transaction. On May 1, 2027, A engages in an applicable transaction. A is an applicable taxpayer with respect to its share of tax-exempt income allocated to A pursuant to section 48D(d)(2)(A)(i)(II) and (IV). Neither the ABCD partnership nor partners B, C, or D are an applicable taxpayer with respect to the applicable transaction entered into by A.

(iv) *Affiliated groups.* For purposes of this paragraph (b)(2), all members of an affiliated group under section 1504(a) of the Code, determined without regard to section 1504(b)(3), are treated as one taxpayer.

(3) *Applicable transaction.* Except as provided in section 50(a)(6)(D)(ii) and paragraph (c)(1) of this section, the term *applicable transaction* means, with respect to any applicable taxpayer, any significant transaction involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in any foreign country of concern.

(4) *Applicable transaction recapture amount.* The term *applicable transaction recapture amount* means, with respect to an applicable taxpayer, the aggregate decrease in the credits allowed under section 38 of the Code for all prior taxable years that would have resulted solely from reducing to zero any credit determined under section 46 of the Code that is attributable to the advanced manufacturing investment credit under section 48D(a), with respect to property that has been placed in service during the applicable period.

(5) *Existing facility.* The term *existing facility* means any facility built, equipped, and operating prior to a taxpayer placing in service qualified property as defined in section 48D(b)(2) and § 1.48D–3. Existing facilities are defined by their semiconductor manufacturing capacity at the time the qualified property is placed in service; facilities that undergo significant renovations, as defined in paragraph (b)(9) of this section, will no longer qualify as existing facilities within the meaning of this paragraph (b)(5).

(6) *Foreign country of concern.* The term *foreign country of concern* has the same meaning as provided in 15 CFR 231.102.

(7) *Material expansion.* The term *material expansion* means—

(i) With respect to an existing facility, the increase of the semiconductor manufacturing capacity of that facility by more than five percent during the applicable period due to the addition of

a cleanroom, production line or other physical space, or a series of such additions; or

(ii) Any construction of a new facility for semiconductor manufacturing.

(8) *Semiconductor manufacturing capacity.* The term *semiconductor manufacturing capacity* means, consistent with 15 CFR 231.117, the productive capacity of a semiconductor facility. In the case of a semiconductor wafer production facility that includes the processes of growing single-crystal ingots and boules, wafer slicing, wafer bonding, etching and polishing, cleaning, epitaxial deposition, and metrology, semiconductor manufacturing capacity is measured in wafer starts per month. In the case of a semiconductor fabrication facility, semiconductor manufacturing capacity is measured in wafer starts per year. In the case of a packaging facility, semiconductor manufacturing capacity is measured in packages per year.

(9) *Significant renovations.* The term *significant renovations* means building new cleanroom space or adding a production line or other physical space to an existing facility that, in the aggregate during the applicable period, increases semiconductor manufacturing capacity by 10 percent or more of the capacity.

(10) *Significant transaction—(i) In general.* As determined in coordination with the Secretary of Commerce and the Secretary of Defense and except as provided in paragraph (b)(10)(ii) of this section, the term *significant transaction* means any of the following:

(A) An investment, whether proposed, pending, or completed, including any capital expenditure, loan, or gift;

(B) The formation of a subsidiary, whether classified as a corporation or partnership for Federal tax purposes;

(C) A merger, acquisition, or takeover, including—

(1) The acquisition of a new or additional ownership interest in an entity;

(2) The acquisition of a material portion of the assets of an entity; or

(3) A consolidation;

(D) The formation of a joint venture; or

(E) A long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner.

(F) A transaction that involves the expansion of manufacturing capacity for legacy semiconductors (other than with respect to an existing facility or equipment of an applicable taxpayer for manufacturing legacy semiconductors)

if less than 85 percent of the output of the semiconductor manufacturing facility (for example, wafers, semiconductor devices, or packages) by value, is incorporated into final products (that is, not an intermediate product that is used as factory inputs for producing other goods) that are used or consumed in the market of a foreign country of concern; or

(G) A transaction during the applicable period in which an applicable taxpayer knowingly (within the meaning of 15 CFR 231.106) engages in any joint research, as defined in 15 CFR 231.105, or technology licensing effort with a foreign entity of concern that relates to a technology or product that raises national security concerns.

(ii) *Required agreement.* If a taxpayer enters into a required agreement with the Secretary of Commerce pursuant to 15 U.S.C. 4652(a)(6)(C) and 15 CFR 231.112, then the term *significant transaction* for purposes of section 48D and the section 48D regulations has the meaning provided in the required agreement. Defined terms in the required agreement control only for purposes of determining the meaning of the term *significant transaction*. Thus, the effect of a significant transaction is determined under section 50(a)(3) and (6) during the applicable term defined under paragraph (b)(1) of this section.

(11) *Technology licensing.* The term *technology licensing* has the same meaning as provided in 15 CFR 231.120.

(12) *Technology or product that raises national security concerns.* The term *technology or product that raises national security concerns* has the same meaning as provided in 15 CFR 231.121.

(c) *Exception from the definition of applicable transaction for the manufacturing of legacy semiconductors—(1) In general.* The term *applicable transaction*, as defined in section 50(a)(6)(D) and paragraph (b)(3) of this section, does not include a transaction that primarily involves the expansion of manufacturing capacity for legacy semiconductors, but only to the extent not described in paragraph (b)(10)(i)(F) of this section.

(2) *Legacy semiconductor.* The term *legacy semiconductor* has the same meaning as provided in 15 CFR 231.107.

(d) *Example: Applicable transaction credit claimed.* On January 15, 2025, X Corp, a C corporation that is a calendar-year taxpayer, placed in service Property A, qualified property with a basis of \$1 million. X Corp's qualified investment, as determined in § 1.46–3(c), for the taxable year is \$1 million. X Corp's advanced manufacturing investment credit for the taxable year is \$250,000 (\$1 million × 0.25) and,

assume that X Corp's income tax liability is \$400,000. X Corp does not determine any other credits in 2025. X claims an advanced manufacturing investment credit of \$250,000 for its 2025 taxable year. On December 15, 2026, X Corp engages in an applicable transaction, as defined in section 50(a)(6)(D) and paragraph (b)(3) of this section and did not cease or abandon the transaction within 45 days of a determination and notice by the Commissioner. X Corp has not determined or claimed any general business credits since its 2025 taxable year. The aggregate decrease in credits

allowed under section 38 for all prior years resulting from reducing to zero any credit determined under section 46 that is attributable to the advanced manufacturing investment credit is \$250,000 (\$250,000 (credit allowed) – \$0 (credit that would have been allowed)). X Corp's tax under chapter 1 is increased by \$250,000 ($1.0 \times \$250,000$) for the 2026 taxable year. Pursuant to section 48D(c), for the 2026 taxable year, X Corp is not an eligible taxpayer and is ineligible to claim or carryforward the advanced manufacturing investment credit.

(e) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after October 23, 2024.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: October 8, 2024.

Aviva R. Aron-Dine,
Deputy Assistant Secretary of the Treasury
(Tax Policy).

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Part IV

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15 CFR Parts 734, 740, et al.

Export Administration Regulations: Removal of License Requirements for Certain Spacecraft and Related Items for Australia, Canada, and the United Kingdom; Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities (CSA); Rules and Proposed Rule

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 742 and 774**

[Docket No. 241004–0263]

RIN 0694–AJ85

Export Administration Regulations: Removal of License Requirements for Certain Spacecraft and Related Items for Australia, Canada, and the United Kingdom**AGENCY:** Bureau of Industry and Security, Department of Commerce.**ACTION:** Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by removing controls for certain spacecraft and related items for exports and reexports to Australia, Canada, and the United Kingdom. These spacecraft and related items involve remote sensing or space-based logistics, assembly, or servicing. Taking into account the close relations with these three allied countries, including in space collaboration, as well as their inclusion in the National Technology and Industrial Base (NTIB), this final rule removes the license requirement for these countries for these spacecraft and related items.

DATES: This rule is effective October 23, 2024.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Joseph A. Cristofaro, Director, Sensors, Aerospace and Marine Division, Office of National Security Controls, Bureau of Industry and Security, U.S. Department of Commerce, at (202)–482–2440 or by email: Joseph.Cristofaro@bis.doc.gov.

For general questions, contact Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: RPD2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**I. Background***A. National Space Council Direction To Review Space Export Controls*

On December 20, 2023, the National Space Council convened to discuss U.S. leadership in space. The Department of State and the Department of Commerce (Commerce) were subsequently tasked to “conduct a review of space export controls to enable a globally competitive U.S. space industrial base while protecting our national security and foreign policy interests” (see The White

House FACT SHEET: Strengthening U.S. International Space Partnerships released on December 20, 2023). The changes being made in the final rule will better enable a globally competitive U.S. space industrial base while protecting our national security and foreign policy interests for exports and reexports to Australia, Canada, and the United Kingdom.

B. Commerce Response to the National Space Council Directed Review of Space Export Controls

This final rule is part of Commerce’s regulatory response to this direction from the National Space Council to review relevant export controls and processes to better enable a globally competitive U.S. space industrial base while protecting our national security and foreign policy interests. This final rule makes important changes to EAR spacecraft and related items controls to better rationalize the controls and facilitate collaboration with three close allies of the United States and participants in the NTIB (10 U.S.C. 4801(1)), namely Australia, Canada, and the United Kingdom. Specifically, the changes in this rule will better enable a globally competitive U.S. space industrial base while protecting our national security and foreign policy interests by facilitating license-free trade in certain remote sensing and space-based logistics, assembly, and servicing spacecraft and technology with these close allies.

This final rule removes Australia, Canada, and the United Kingdom from the worldwide license requirement for such items and makes conforming changes to Export Control Classification Numbers (ECCNs) 9A515 and 9E515. In so doing, this final rule builds upon an interim final rule published on April 19, 2024 (89 FR 28594), which removed certain license requirements for Australia and the United Kingdom, and more closely aligned treatment of those countries with that of Canada, by streamlining space commerce with all three nations. This final rule represents just one line of effort in Commerce’s response to the National Space Council direction to review space export controls, including this final rule being published concurrently with a Commerce interim final rule, “*Export Administration Regulations: Revisions to Space-Related Export Controls*” (RIN 0694–AJ87) and a Commerce proposed rule “*Export Administration Regulations: Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities (CSA)*” (RIN 0694–AH66) that build on advanced notices of proposed

rulemaking published on March 8, 2019 (84 FR 8485 and 84 FR 8486).

II. Changes to the EAR*A. Removing Australia, Canada, and the United Kingdom, From a Worldwide License Requirement for Certain Spacecraft and Related Items*

In 15 CFR 742.6 (Regional stability), this final rule revises paragraph (a)(9) (*Special RS Column 1 license requirement applicable to certain spacecraft and related items*), which prior to this final rule imposed a worldwide license requirement for spacecraft and related items classified under ECCN 9A515.a.1, a.2, a.3, a.4, .g, and ECCN 9E515.f. These spacecraft and related items involve remote sensing or space-based logistics, assembly, or servicing, and so prior to this final rule were subject to a worldwide license requirement, including for exports and reexports to Australia, Canada, and the United Kingdom. However, taking into account the close relations with the U.S. and these three allied countries, including in space collaboration as well as with the U.S. defense industrial base, as demonstrated by their inclusion in the NTIB, this final rule removes the license requirement for such items when destined to these countries. The removal of such license requirements for Australia, Canada, and the United Kingdom aligns the EAR’s requirements with interagency licensing practice, as BIS has not denied a license application for such items to these three allied countries in the past five years.

BIS estimates the removal of this license requirement for Australia, Canada, and the United Kingdom under § 742.6(a)(9) will result in a reduction of 90 license applications being submitted to BIS annually.

B. Conforming Changes for Removal of License Requirement for Australia, Canada, and the United Kingdom

This final rule makes two conforming changes to other parts of the EAR to reflect the removal of the license requirement for Australia, Canada, and the United Kingdom under § 742.6(a)(9) for spacecraft and related items classified under ECCN 9A515.a.1, a.2, a.3, a.4, .g, and ECCN 9E515.f. Specifically, in supplement no. 1 to part 774—Commerce Control List, this final rule revises ECCNs 9A515 and 9E515. This final rule revises the License Requirement Note in ECCNs 9A515 and 9E515 to reflect that this final rule removes Australia, Canada, and the United Kingdom from the scope of the worldwide license requirement described in the License Requirement

Note included in each of these respective ECCNs, as described further in section II.A and B.

The License Requirement Note in ECCN 9A515 specifies that the Commerce Country Chart in supplement no. 1 to part 738 is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, a.2, a.3, a.4, and .g. The License Requirement Note in ECCN 9A515 includes a second sentence that directs exporters and reexporters to see § 742.6(a)(9), which specifies that such commodities are subject to a worldwide license requirement. This final rule revises the second sentence of the License Requirement Note in ECCN 9A515 to add the phrase “except to Australia, Canada, and the United Kingdom,” to specify that exports and reexports to these countries now excluded from the scope of this worldwide license requirement.

The License Requirement Note in ECCN 9E515 specifies that the Commerce Country Chart is not used for determining license requirements for “technology” classified ECCN 9E515.f. The License Requirement Note in ECCN 9E515 includes a second sentence that directs exporters and reexporters to see § 742.6(a)(9), which specifies that such “technology” is subject to a worldwide license requirement. This final rule revises the second sentence of the License Requirement Note in ECCN 9E515 to add the phrase “except to Australia, Canada, and the United Kingdom,” to specify that exports and reexports to these countries are now excluded from the scope of this worldwide license requirement.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. In particular, and as noted elsewhere, Section 1753 of ECRA (50 U.S.C. 4812) authorizes the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction. Further, Section 1754(a)(1)–(16) of ECRA (50 U.S.C. 4813(a)(1)–(16)) authorizes, *inter alia*, the establishment of a list of controlled items; the prohibition of unauthorized exports, reexports, and transfers (in-country); the requirement of licenses or other authorizations for exports, reexports, and transfers (in-country) of controlled items; apprising the public of

changes in policy, regulations, and procedures; and any other action necessary to carry out ECRA that is not otherwise prohibited by law. Pursuant to Section 1762(a) of ECRA (50 U.S.C. 4821(a)), these changes can be imposed in a final rule without prior notice and comment.

Rulemaking Requirements

1. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This final rule has been designated as significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute;
- 0694–0122, “Licensing Responsibilities and Enforcement;” and
- 0607–0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission.

This rule changes the respondent burden for control number 0694–0088 by reducing the estimated number of submissions by 90, which is expected to reduce the current approved estimates, which will result in a reduction of 44 burden hours saved and cost savings to the public of \$1,672 under this collection. The respondent burden under controls numbers 0694–0096 and 0607–0152 are not anticipated to change as a result of this final rule. Current information regarding all three collections of information—including all background materials—can be found

at: <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

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

4. Pursuant to section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

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

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 1. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 2. Section 742.6 is amended by revising paragraph (a)(9) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(9) *Special RS Column 1 license requirement applicable to certain spacecraft and related items.* A license is required for all destinations, except for Australia, Canada, and the United Kingdom, for spacecraft and related items classified under ECCN 9A515.a.1, a.2, a.3, a.4, .g, and ECCN 9E515.f.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Supplement no. 1 to part 774 is amended by revising ECCNs 9A515 and 9E515, to read as follows:

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

* * * * *

9A515 “Spacecraft” and related commodities, as follows (see List of Items Controlled). License Requirements
Reason for Control: NS, RS, MT, AT

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
NS applies to entire entry, except .e and .y.	NS Column 1.
RS applies to entire entry, except .e and .y.	RS Column 1.
RS applies to 9A515.e ...	RS Column 2.
RS applies to 9A515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia or Venezuela (see § 742.6(a)(7)).
MT applies to microcircuits in 9A515.d and .e.2 when “usable in” “missiles” for protecting “missiles” against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41×10^5 newton seconds.	MT Column 1.
AT applies to entire entry	AT Column 1.

License Requirement Note: *The Commerce Country Chart is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, a.2, a.3, a.4, and .g. See § 742.6(a)(9), which specifies that such commodities are subject to a worldwide*

license requirement, except to Australia, Canada, and the United Kingdom.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: \$1,500

GBS: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for “spacecraft” in ECCNs 9A515.a.1, a.2, a.3, or a.4, “sub-orbital craft,” or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and “600 series” items). (2) License Exception STA may not be used if the “spacecraft” controlled in ECCN 9A515.a.1, a.2, a.3, or a.4 contains a separable or removable propulsion system enumerated in USML Category IV(d)(2) or USML Category XV(e)(12) and designated MT. (3) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9A515.

List of Items Controlled

Related Controls: Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including “software”) directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle, including both planning and onsite support, or furnishing any assistance (including training) in the launch failure analysis or investigation for items in ECCN 9A515.a, are “subject to the ITAR.” All other “spacecraft,” as enumerated below and defined in § 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific “space-qualified” items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station (ISS), the James Webb Space Telescope (JWST), and “specially designed” “parts” and “components” therefor. See USML Category XI(c) for controls on certain “Monolithic Microwave Integrated Circuit” (“MMIC”) amplifiers. See ECCN 9A610.g for pressure suits used for high altitude aircraft.

Related Definitions: “Microcircuit” means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

Items: “Spacecraft” and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles “subject to the ITAR” integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A515.a “spacecraft” remains “subject to the EAR” even when it is exported, reexported, or transferred (in-country) with a “hosted payload” described in USML Category XV(e)(17)

incorporated therein. In all other cases, a “hosted payload” performing a function described in USML Category XV(a) always remains a USML item. The removal of the defense article subject to the ITAR from the spacecraft is a retransfer under the ITAR and would require an ITAR authorization, regardless of the CCL authorization the spacecraft is exported under. Additionally, transfer of technical data regarding the defense article subject to the ITAR integrated into the spacecraft would require an ITAR authorization.

a. “Spacecraft,” including satellites, and space vehicles and “sub-orbital craft,” whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV or described in ECCN 9A004.u or .w, that:

a.1. Have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters;

a.2. Have remote sensing capabilities beyond NIR (*i.e.*, SWIR, MWIR, or LWIR);

a.3. Have radar remote sensing capabilities (*e.g.*, AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;

a.4. Provide space-based logistics, assembly, or servicing of another “spacecraft”; or

a.5. Are not described in ECCN 9A515.a.1, a.2, a.3 or a.4.

Note: *ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary rovers, planetary and interplanetary probes, in-space habitats, and “sub-orbital craft,” not identified in ECCN 9A004 or USML Category XV(a).*

b. Ground control systems and training simulators “specially designed” for telemetry, tracking, and control of the “spacecraft” controlled in paragraphs 9A004.u or 9A515.a.

c. [Reserved]

d. Microelectronic circuits (*e.g.*, integrated circuits, microcircuits, or MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are “specially designed” for defense articles, “600 series” items, or items controlled by ECCNs 9A004.v or 9A515:

d.1. A total dose of 5×10^5 Rads (Si) (5×10^3 Gy (Si));

d.2. A dose rate upset threshold of 5×10^8 Rads (Si)/sec (5×10^6 Gy (Si)/sec);

d.3. A neutron dose of 1×10^{14} n/cm² (1 MeV equivalent);

d.4. An uncorrected single event upset sensitivity of 1×10^{-10} errors/bit/day or less, for the CREME-MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and

d.5. An uncorrected single event upset sensitivity of 1×10^{-10} errors/part or less for a fluence of 1×10^7 protons/cm² for proton energy greater than 50 MeV.

e. Microelectronic circuits (*e.g.*, integrated circuits, microcircuits, or MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described

as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND “specially designed” for defense articles controlled by USML Category XV or items controlled by ECCNs 9A004.u or 9A515:

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) (1×10^3 Gy(Si)) and $< 5 \times 10^5$ Rads (Si) (5×10^3 Gy(Si)); and a single event effect (SEE) (*i.e.*, single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) ≥ 80 MeV-cm²/mg; or

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)) and not described in 9A515.d.

Note 1 to 9A515.d and .e: Application specific integrated circuits (ASICs), integrated circuits developed and produced for a specific application or function, specifically designed or modified for defense articles and not in normal commercial use are controlled by Category XI(c) of the USML regardless of characteristics.

Note 2 to 9A515.d and .e: See 3A001.a and .z for controls on radiation-hardened microelectronic circuits “subject to the EAR” that are not controlled by 9A515.d or .e.

f. Pressure suits (*i.e.*, space suits) capable of operating at altitudes 55,000 feet above sea level.

g. Remote sensing components “specially designed” for “spacecraft” described in ECCNs 9A515.a.1 through a.4 as follows:

g.1. Space-qualified optics (*i.e.*, lens, mirror, membrane having active properties (*e.g.*, adaptive, deformable)) with the largest lateral clear aperture dimension equal to or less than 0.35 meters; or with the largest clear aperture dimension greater than 0.35 meters but less than or equal to 0.50 meters;

g.2. Optical bench assemblies “specially designed” for ECCN 9A515.a.1, a.2, a.3, or a.4 “spacecraft;” or

g.3. Primary, secondary, or hosted payloads that perform a function of ECCN 9A515.a.1, a.2, a.3, or a.4 “spacecraft.”

h. Spacecraft thrusters using bi-propellants or mono-propellants that provide thrust equal to or less than 150 lbf (*i.e.*, 667.23 N) vacuum thrust.

i. through w. [RESERVED]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for defense articles controlled by USML Category XV or items controlled by 9A515, and that are NOT:

x.1. Enumerated or controlled in the USML or elsewhere within ECCNs 9A515 or 9A004;

x.2. Microelectronic circuits and discrete electronic components;

x.3. Described in ECCNs 7A004 or 7A104;

x.4. Described in an ECCN containing “space-qualified” as a control criterion (*i.e.*, 3A001.b.1, .e.4 or .z, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, .b.2, .d.1, 6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2);

x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 and .z for controls on these items);

x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 and .z for controls on these items); or

x.7. Elsewhere specified in ECCN 9A515.y.

Note to 9A515.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of that paragraph or category.

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Space grade or for spacecraft applications thermistors;

y.3. Space grade or for spacecraft applications RF microwave bandpass ceramic filters (Dielectric Resonator Bandpass Filters);

y.4. Space grade or for spacecraft applications hall effect sensors;

y.5. Space grade or for spacecraft applications subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors; and

y.6. Space grade or for spacecraft applications flight cable assemblies.

* * * * *

9E515 “Technology,” “required” for the “development,” “production,” operation, installation, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
NS applies to entire entry except 9E515.y.	NS Column 1.
MT applies to technology for items in 9A515.d, .e.2, .h, and 9B515.a controlled for MT reasons.	MT Column 1.
RS applies to entire entry except 9E515.y.	RS Column 1.
RS applies to 9E515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

License Requirement Note: The Commerce Country Chart is not used for determining license requirements for “technology” classified ECCN 9E515.f. See § 742.6(a)(9), which specifies that such “technology” is subject to a worldwide license requirement, except to Australia, Canada, and the United Kingdom.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ECCN 9E515.b, .d, .e, or .f unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and “600 series” items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “technology” in ECCN 9E515.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated in USML Category XV are subject to the control of USML paragraph XV(f). See also ECCNs 3E001, 3E003, 6E001, and 6E002 for specific “space-qualified” items. See ECCNs 9E001 and 9E002 for technology for the International Space Station, the James Webb Space Telescope (JWST) and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor. See USML category XV(f) for controls on technical data and defense services related to launch vehicle integration.

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.a.1, a.2, a.3, a.4, .b, .d, .e, or .g), ECCN 9B515, or “software” controlled by ECCN 9D515.a.

b. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of software controlled by ECCN 9D515.b.

c. [Reserved]

d. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.d.

e. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.e.

f. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515.a.1, a.2, a.3, a.4, or .g.

g. through x. [Reserved]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A515.y or 9D515.y.

Note 1: [Reserved]

Note 2: Activities and technology/technical data directly related to or required for the spaceflight (*e.g.*, sub-orbital, orbital, lunar, interplanetary, or otherwise beyond Earth orbit) passenger or participant experience, regardless of whether the passenger or participant experience is for space tourism, scientific or commercial research, commercial manufacturing/production activities, educational, media, or commercial transportation purposes, are not subject to the ITAR or the EAR. Such activities and technology/technical data include those directly related to or required for:

(i) “Spacecraft” access, ingress, and egress, including the operation of all “spacecraft” doors, hatches, and airlocks;

(ii) Physiological training (*e.g.*, human-rated centrifuge training or parabolic flights, pressure suit or spacesuit training/operation);

(iii) Medical evaluation or assessment of the spaceflight passenger or participant;
 (iv) Training for and operation by the passenger or participant of health and safety related hardware (e.g., seating, environmental control and life support, hygiene facilities, food preparation, exercise equipment, fire suppression, communications equipment, safety-related clothing or headgear) or emergency procedures;

(v) Viewing of the interior and exterior of the spacecraft or terrestrial mock-ups;

(vi) Observing “spacecraft” operations (e.g., pre-flight checks, landing, in-flight status);

(vii) Training in “spacecraft” or terrestrial mock-ups for connecting to or operating passenger or participant equipment used for purposes other than operating the “spacecraft”; or

(viii) Donning, wearing or utilizing the passenger’s or participant’s flight suit, pressure suit or spacesuit, and personal equipment.

* * * * *

Thea D. Rozman Kendler,
 Assistant Secretary for Export
 Administration.

[FR Doc. 2024–23932 Filed 10–17–24; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, 744, 746, and 774

[Docket No. 241004–0264]

RIN 0694–AJ87

Export Administration Regulations: Revisions to Space-Related Export Controls

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

ACTION: Interim final rule.

SUMMARY: In this interim final rule (IFR), the Bureau of Industry and Security (BIS) makes changes to controls for spacecraft and related items under the Export Administration Regulations (EAR). This IFR reduces license requirements on less sensitive items to reflect the close relations with certain countries to better facilitate space collaboration; and makes refinements and clarifications to existing controls. These changes will better enable a globally competitive U.S. space industrial base while continuing to protect U.S. national security and foreign policy interests.

DATES: This rule is effective October 23, 2024. Comments must be received by BIS no later than November 22, 2024.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal at: www.regulations.gov. The regulations.gov ID for this rule is: BIS–2024–0031. Please refer to RIN 0694–AJ87 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” Any submissions with file names that do not begin with either a “BC” or a “P” will be assumed to be public and will be made publicly available through <https://www.regulations.gov>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT:

For technical questions, contact Joseph A. Cristofaro, Director, Sensors, Aerospace and Marine Division, Office of National Security Controls, Bureau of Industry and Security, U.S. Department of Commerce, at 202–482–2440 or by email: Joseph.Cristofaro@bis.doc.gov.

For general questions, contact Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: RPD2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. National Space Council Direction To Review Space Export Controls

On December 20, 2023, the National Space Council convened to discuss U.S.

leadership in space. As announced at the Council discussion, the Departments of State and Commerce (hereinafter, State and Commerce, respectively) were subsequently tasked to “conduct a review of space export controls to enable a globally competitive U.S. industrial base while protecting our national security and foreign policy interests.” (see The White House FACT SHEET: Strengthening U.S. International Space Partnerships released on December 20, 2023). In response to the tasking, and pursuant to its authorities under the Export Control Reform Act (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852), this IFR is being published concurrently with a Commerce final rule, “*Export Administration Regulations: Removal of License Requirements for Certain Spacecraft and Related Items for Australia, Canada, and the United Kingdom*” (0694–AJ85). This final rule makes important changes to the EAR’s controls on remote sensing and space-based logistics, assembly, and servicing spacecraft and related items to better rationalize the controls and facilitate collaboration with three close allies of the United States (i.e., Australia, Canada, and the United Kingdom), as directed by the National Space Council tasking.

This IFR builds on the space-related export control revisions for Australia, Canada, and the United Kingdom final rule being published concurrently with this IFR by further reducing the export control requirements on certain space-related items when destined to U.S. allies and partners (including, but not limited to, Australia, Canada, and the United Kingdom).

BIS welcomes public comment on the changes made in this IFR. In addition to the changes made in this IFR, BIS also welcomes comments in response to this IFR for identifying any additional changes to the EAR’s space-related export controls, which commenters believe may enable a globally competitive U.S. space industrial base while protecting U.S. national security and foreign policy interests.

This IFR is also being published concurrently with a Commerce proposed rule “*Export Administration Regulations: Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities (CSA)*” (RIN 0694–AH66) that builds on advanced notices of proposed rulemaking published on March 8, 2019, that are discussed in section I.B.

B. Past Activities To Review Spacecraft and Related Controls Under Departments of State and Commerce Export Control Authorities

On March 8, 2019, Commerce and State published two advanced notices of proposed rulemaking (ANPRMs) (84 FR 8485 and 84 FR 8486, respectively) seeking input on potential revisions to export controls related to satellites and spacecraft under State's International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) and the EAR. In public comments received in response to those ANPRMs and during subsequent export control outreach events and interagency meetings to review space and related items export controls, industry and interagency representatives proposed several amendments to the EAR to support more robust international partnerships, improve the consistency and clarity of the EAR, and ensure that whenever possible U.S. policies are not putting U.S. industries at a comparative disadvantage. Building on the 2019 ANPRMs, in December 2023, as part of the activities of the National Space Council described under section I.A of this IFR, State and Commerce were tasked with conducting a review of space export controls to enable a globally competitive U.S. industrial base while protecting national security and foreign policy interests. Based on an initial interagency review, and pursuant to its authorities under ECRA, Commerce adopted the regulatory response described in section III of this IFR.

In response to the Commerce ANPRM, BIS received 19 public comments. The 19 comments submitted in response to the Commerce ANPRM consisted of comments from 12 major companies in the space industry, four trade associations with large representation from the space industry, two universities well known for their research activities in space-related issues, and one individual. BIS has reviewed these comments and used them to help inform interagency review of export controls on space and related items. In today's IFR, BIS summarizes and responds to comments received in response to the Commerce ANPRM either with regulatory changes or in clarifications made in the preamble of this IFR to address certain comments that do not require regulatory changes.

BIS also notes that a large number of the comments received in response to the Commerce ANPRM, which were also submitted to State in response to the State ANPRM, requested that additional defense articles be moved

from the U.S. Munitions List (USML) to the Commerce Control List (CCL). BIS considered those ITAR specific comments as part of the interagency review process that included State but does not further act upon them here because State has the statutory authority as delegated by the President to the Secretary of State to designate those items as defense articles and defense services for purposes of the ITAR.

BIS reviewed all relevant comments submitted in response to the Commerce ANPRM and responds to them directly, as appropriate, in the discussion of the regulatory changes in section III of this IFR.

II. Overview of This Interim Final Rule

This IFR makes changes to the controls for spacecraft and related items under the EAR. ECRA (codified, as amended, at 50 U.S.C. 4801–4852) provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. Section 1753(a) of ECRA (50 U.S.C. 4812) authorizes the regulation of “(1) the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons.” The changes being made in this IFR are needed for the regulation of exports, reexports, and transfers (in-country) of spacecraft and related items subject to U.S. jurisdiction. The two sets of changes today's IFR makes are described in section III as follows:

A. Reducing license requirements on less sensitive items to reflect the close relations with certain countries and to better facilitate space collaboration with those countries while continuing to protect U.S. national security and foreign policy interests; and

B. Making refinements and clarifications to existing controls to make the controls easier to understand (e.g., clarifying certain ECCNs or the applicability of a license exception).

III. Changes to the EAR

A. Reducing License Requirements on Less Sensitive Items To Reflect the United States' Close Relations With Certain Countries and To Better Facilitate Space Collaboration While Continuing To Protect U.S. National Security and Foreign Policy Interests

1. Changing Reasons for Control From NS1 and RS1 to NS2 and RS2

In Export Control Classification Number (ECCN) 9A515, this IFR revises the License Requirements section under the NS1 and RS1 Control entries to exclude 9A515.x from the scope of the

license requirements. This IFR, as a conforming change, also adds an NS2 and RS2 Control for ECCN 9A515.x. The .x paragraphs in ECCNs serve as a catch-all control for “parts,” “components,” “accessories,” and “attachments” “specially designed” for use in or with certain items, typically by referencing categories of items. These .x catch-all controls play an important role in the 9x515 control structure. However, given the less sensitive nature of many of the 9A515.x commodities, in particular when exported and reexported to U.S. allies and partners, and the importance of the items to the U.S. industrial base, BIS has determined it is warranted to take these steps to better rationalize the 9A515.x license requirements. These changes in the license requirements for 9A515.x commodities will better facilitate exports and reexports to U.S. allies, partners, and other destinations of less export control concern by reducing the 9A515.x reasons for control from NS1 and RS1 to NS2 and RS2. As described further below, any 9A515.x items BIS determines continue to warrant the higher NS1 and RS1 controls will be added to a separate 9A515 “items” paragraph (*i.e.*, new 9A515.w or otherwise enumerated under 9A515) which this IFR adds and reserves as a placeholder to control commodities that warrant higher-level NS1 and RS1 controls. This change is pursuant to the Export Control Reform Act (ECRA) of 2018 at 50 U.S.C. 4811(2)(C), which directs that export controls should be used to strengthen the defense industrial base.

Any “parts,” “components,” “accessories,” and “attachments” that are determined subsequently to warrant NS1 and RS1 controls would be enumerated under a new items paragraph under 9A515.w or otherwise enumerated under 9A515 to ensure U.S. national security and foreign policy interests are protected. Because the NS1 and RS1 controls apply to the entire 9A515 entry, except as specified in the exclusions in the NS1 and RS1 controls paragraphs, no additional changes to the NS1 and RS1 controls paragraph under ECCN 9A515 are needed to make this change.

The changes described here are also described in greater detail under section III.B.1.a through .e of this IFR where all the changes made to the ECCNs included in this IFR (*i.e.*, 9A004, 9A515, 9A604, 9D515, and 9E515) are described.

2. Adding Additional .y Items to 9A515 and to 9A004

In addition to the changes described above in section III.A.1, this IFR

addresses a subset of .x items that warrant being added to .y paragraphs under ECCN 9A515. The paragraph (b)(1) release under the “specially designed” definition in § 772.1 and the special commodity classification (CCATS) process under § 748.3(e) contemplate that, either through the advisory opinion process or through U.S. Government review, additional items may be identified as warranting a downgrade in their “specially designed” control status to reflect the less sensitive nature of these items. Many comments in response to the ANPRM had identified various suggestions for certain 9A515.x commodities that warranted being removed from .x and added to 9A515.y, as well as recommending the same commodities, in many cases, as warranting also being identified under 9A004.y.

BIS’s Technical Advisory Committees (TACs), as well as other agencies involved in space-related activities (e.g., the National Aeronautics and Space Administration (NASA)) assisted BIS in identifying the “specially designed” commodities to be added to ECCNs 9A515.y, and 9A004.y. Consistent with the § 748.3(e) process, Commerce, the Department of Defense (Defense), and State concurred with the addition of these commodities to .y, as well as with the moving of certain commodities from 9A515.x to other item paragraphs under ECCNs 9A515 and 9A004. Note that in certain cases the NS1 and RS1 license requirements may be retained, such as for commodities that may be subsequently moved from 9A515.x to new “items” paragraph 9A515.w, which this IFR reserves for future use.

The changes described here are described in greater detail under sections III.B.1.a through .e of this IFR, where a description of all the changes made to the ECCNs (i.e., 9A004, 9A515, 9A604, 9D515, and 9E515) is included.

3. Adding ECCNs 9D515 and 9E515 to the Exclusion From License Requirements When the Release Is for a “Standards-Related Activity”

In § 734.10 (Patents and standards-related activity), this IFR adds paragraph (b)(1)(iv) to add references to “software” that is classified under ECCN 9D515 (other than 9D515.d or .e); and “technology” classified under ECCN 9E515.a, .b, or .f (limited to technology for 9A515.a.4) when the release is for a “standards-related activity.” See §§ 734.10 and 772.1 of the EAR. These software and technology, which include space-based servicing, assembly, and logistics are crucial in the furtherance of commercial spacecraft flight safety (specifically for in-space

servicing, assembly, or logistics). Barriers to U.S. participation in the development of these standards would be detrimental and counterproductive to U.S. commercial spacecraft development and national security interests. Lack of U.S. participation in the development of standards in this area would cede the development of international standards to foreign actors that may not only disregard U.S. commercial and national security interests, but actively work to destabilize them. Therefore, this IFR adds specific portions of ECCNs 9D515 and 9E515 to this EAR provision, while maintaining existing controls on more sensitive software and technology related to radiation-hardened integrated circuits and remote sensing, consistent with U.S. national security and foreign policy interests.

B. Making Refinements and Clarifications to Existing Controls

1. Clarifications to Spacecraft and Related Items on the CCL

a. ECCN 9A004

i. *Reducing license requirement from NS1 to NS2.* This IFR revises the License Requirements section for ECCN 9A004 to reduce the license requirement from NS1 to NS2 for 9A004.v and .x, as well as for new 9A004.s, which this IFR also adds to 9A004.

ii. *Addition of RS license requirement for 9A004.y.* This IFR adds a new RS license requirement to 9A004.y to impose a license requirement for exports and reexports to China, Russia, or Venezuela (15 CFR 742.6(a)(7)). This IFR adds this RS license requirement for consistency with other “600 series” and 9x515 ECCNs that include a .y “items” paragraph. The addition of the RS license requirement to 9A004.y is a conforming change with the license requirements that apply for other .y items in other “600 series” and 9x515 ECCNs to ensure that such .y items this IFR adds to 9A004.y may not be exported or reexported to China, Russia, or Venezuela without a BIS authorization.

iii. *Clarification to relationship between ECCN 9A004, 9A515, and USML Category IV.* Paragraphs a. through f. of ECCN 9A004 apply to certain space launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, on-board systems or equipment, and terrestrial equipment. They are listed in ECCN 9A004.a through .f in order to harmonize ECCN 9A004 with the Wassenaar Arrangement Dual-Use List, even though the controls for these items are found under ECCN 9A515. This IFR makes revisions to the

License Requirement Note in ECCNs 9A004 and 9A515 to make this relationship clearer and to direct exporters, reexporters, and transferors to see USML Category IV for 9A004.a. The License Requirement Note in ECCN 9A004 prior to this IFR already specified that 9A004.b through .f, and .h are controlled under ECCN 9A515. This IFR further clarifies the relationship between ECCN 9A004 and 9A515 by specifying that the commodities described under 9A004.g, h, .r, .s, and .u through .y are controlled under ECCN 9A004. This IFR also revises the License Requirement Note to ECCN 9A515 to add the same text as this IFR adds to the License Requirement Note to 9A004 as a new License Requirement Note (2) to ECCN 9A515 and redesignates the previous License Requirement prior to this rule as new License Requirement Note (1). This IFR describes this change to ECCN 9A515 here instead of the III.B.1.b. below where the other changes to 9A515 are described because this revised License Requirement Note has applicability to both 9A004 and 9A515.

Two commenters in response to the Commerce ANPRM requested BIS provide additional clarification for the relationship between ECCN 9A004 and 9A515, including clarifying the intent of the License Requirement Note in these two respective ECCNs to better assist exporters, reexporters, and transferors classifying commodities under these two ECCNs, as well as USML Category IV. This IFR revises the License Requirement Note to 9A004 and 9A515 in response to these comments. BIS welcomes comments on these changes in this IFR.

iv. *Removal of N.B. in 9A004.* In the “items” paragraph in the List of Items Controlled section of ECCN 9A004, this IFR removes the *nota bene* (N.B.) following “items” paragraph .e.3 because the USML and CCL Orders of Review already provide sufficient guidance on the scope of jurisdiction of the two control lists and the text of the *nota bene* should be more precise when referencing jurisdiction. In order to avoid confusion, this IFR removes this *nota bene* and this IFR directs exporters, reexporters, and transferors to review the USML Order of Review and CCL Order of Review, which provide precise guidance on determining export control jurisdiction and classification of an item.

v. *Addition of 9A004.r to clarify control on in-space habitats.* This IFR adds ECCN 9A004.r to clarify that existing 9A004 controls in-space habitats, other than the International Space Station (ISS). This IFR also adds a Note 4 to 9A004.r to provide

additional guidance on what is considered an in-space habitat by specifying that in-space habitats are considered the commercial equivalent of a space station because it is used for persons conducting experiments or space tourism activities.

vi. *Addition of 9A004.s to clarify controls on certain “parts,” “components,” “accessories,” and “attachments.”* This IFR adds ECCN 9A004.s to clarify that existing 9A004 controls “parts,” “components,” “accessories,” and “attachments” that are “specially designed” for in-space habitats in 9A004.r and that are *not* described on the USML; described in ECCN 7A004 or 7A104; described in an ECCN containing “space-qualified” as a control criterion (refer to 9A515.x.4); or described in 9A001, 9A002, 9A003, or 9A991. This IFR as a conforming change for the addition of 9A515.s reserves 9A004.t.

vii. *Addition of .y paragraphs under y.1 through y.63.* This IFR adds .y paragraphs y.1 through y.63 to identify items that would otherwise be within the scope of ECCN 9A004.s or .x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A004.y by Commerce, State, and Defense or that have otherwise been determined by Commerce, State, and Defense as warranting control in 9A004.y. This IFR removes the reference to 9A004.v because these “specially designed” “parts,” “components,” “accessories,” and “attachments” warrant a higher-level control than a .y entry.

viii. *Addition of Note 5 to 9A004 to further specify control for items operating on other celestial bodies.* This IFR as a conforming change to the addition of Note 6 to 9A515 described under section III.B.b.1.viii below adds a new Note 5 to 9A004 to specify that an item, such as a rover, operating on any celestial body other than Earth is treated as if it is on Earth for classification purposes on the CCL.

b. ECCN 9A515

i. *Reducing license requirement from NS1/RS1 to NS2/RS2 for 9A515.x.* This IFR revises the License Requirements for ECCN 9A515 to reduce the license requirement from NS1 and RS1 to NS2 and RS2 for 9A515.x. This IFR revises the NS2 and RS2 license requirement in the License Requirements section to impose a license requirement on 9A515.x.

ii. *Adding new 9A004.r for in-space habitats to the exclusion from 9A515.a.* This IFR, as a conforming change for the addition of 9A004.r described under

section III.B.1.a.v, revises 9A515.a introductory text to add 9A004.r to the exclusion from 9A515.a. This exclusion is needed because anything described by new ECCN 9A004.r would have otherwise met the control parameter under 9A515.a.4 or 9A515.a.5, so this IFR adds this exclusion to 9A515, so these in-space habitats, other than the International Space Station, which is already controlled under 9A004.w, will be controlled under 9A004.r.

iii. *Revisions to 9A515.b for consistency with the Wassenaar Arrangement Control text under WA-9A4 and to provide greater clarity on the types of equipment classified under this entry.* This IFR adds new introductory text for 9A515.b to specify this entry controls equipment for telemetry, tracking, and control, as specified under new “items” paragraphs 9A515.b.1 (Ground control systems and training simulators “specially designed” for telemetry, tracking, and control of the “spacecraft” controlled in paragraphs 9A004.u or 9A515.a), b.2 (Terrestrial equipment “specially designed” for “spacecraft” for any of the following data processing functions: under b.2.a.1 or b.2.a.2), or b.3 (simulators “specially designed” for “verification of operational procedures” of “spacecraft”). This IFR adds this greater specificity for consistency with the WA-9A4 control list entry and to better assist persons classifying items under 9A515.b. To further assist persons classifying items under 9A515.b, this IFR adds a new Technical Note that specifies that for the purposes of 9A515.b.3, “verification of operational procedures” is any of the following: (1) command sequence confirmation; (2) operational training; (3) operational rehearsals; or (4) operational analysis.

iv. *Revision to Note 1 to 9A515.d. and .e to simplify the cross reference to the USML and other ECCN reference.* This IFR redesignates Note 1 to 9A515.d as Note 2 to 9A515.d and .e. This IFR also simplifies the text of this note to limit the scope to be a cross reference to Category XI and ECCN 3A611.f and remove the rest of the text. BIS welcomes comments from the public on the revisions to this note to adopt this more generic cross reference.

v. *Addition of 9A515.w to impose NS1 and RS1 license requirements on “parts,” “components,” “accessories,” and “attachments” that would have otherwise been classified under 9A515.x but warrant a more restrictive NS1 and RS1 license requirement.* The reduction in the license requirement from NS1 and RS1 to the less restrictive NS2 and RS2 is an important part of this IFR for better rationalizing the spacecraft and

related items controls, but in order to reduce the license requirement on 9A515.x, a new “items” paragraph needs to be added to identify certain “parts,” “components,” “accessories,” or “attachments” that still warrant the more restrictive NS1 and RS1 license requirement. Similar to the 9A515.y paragraphs, the “parts,” “components,” “accessories,” and “attachments” classified under new 9A515.w will need to meet the description specified under 9A515.w, which for purposes of this IFR is limited to a reserved paragraph under 9A515.w.1, which BIS intends to populate in the future as interagency decisions are made for certain “parts,” “components,” “accessories,” or “attachments” that warrant the more restrictive NS1 and RS1 license requirement under 9A515.w. As the interagency decides that certain “parts,” “components,” “accessories,” or “attachments” that are not already classified under another CCL entry following the CCL Order of Review warrant a lower-level control, those items may be downshifted to the lower-level 9A515.y controls. Conversely, when the interagency determines that a higher-level control is warranted, items may be upshifted to higher-level 9A515.w controls. For both the 9A515.y and .w paragraphs, the item in question would need to meet the description of the respective .y or .w paragraph and be “specially designed” in order to be classified under one of those “items” paragraphs.

vi. *Addition of new Note 5 to 9A515.b and .x and redesignation of existing Note to 9A515.x as Note 4 to 9A515.x.* This IFR adds a new Note 5 to 9A515.b and .x to clarify the scope of controls over baseband units (BBU). This new Note 5 clarifies that for purposes of 9A515.b and .x, a BBU means a device that interprets the original frequency range of a transmission signal. The new Note 5 further clarifies that these devices are not controlled under 9A515.b or .x when they do not perform telemetry, tracking, and control (TT&C). This new Note 5 would assist persons classifying items under ECCN 9A515.b or .x to more easily determine whether a particular BBU is classified under one of these two “items” paragraphs. To conform with Office of the Federal Register drafting requirements, this IFR also redesignates the existing Note to 9A515.x as Note 4 to 9A515.x, so the Notes will be in numerical order within the ECCN.

A commenter on the Commerce ANPRM requested that BIS add a Note to 9A515.b and 9A515.x, clarifying that BBUs that do not perform TT&C are not controlled under ECCN 9A515. This

commenter states that BBUs that do not fully perform TT&C are in some cases being viewed as 9A515.b or .x TT&C ground system equipment or “components” when they perform merely physical layer-type operations with no knowledge of spacecraft content. This commenter further states that there is a wide array of non-sensitive devices that can demodulate a telemetry carrier and modulate a command one. This commenter states that BBUs with similar limited functionality should not be controlled by 9A515.b or .x. This IFR adds new Note 5 to 9A515.b and .x to clarify the scope of controls over baseband units (BBU) in response to this comment. BIS welcomes comments on this change.

vii. *Addition of .y paragraphs under y.7 through y.74.* This IFR adds .y paragraphs y.7 through y.74, along with making some clarifications to the existing 9A515.y.1 through y.6 descriptions, to identify items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y or that have otherwise been determined by Commerce, State, and Defense as warranting control in 9A004.y. The revisions to existing 9A515.y.4 through .6 include removing the term space grade from 9A515.y.4 through 9A515.y.6 to add other control criteria, which will maintain the same scope of controls, but do it in a way that uses more objective and more commonly used criteria for spacecraft and related items.

viii. *Clarification for how to classify a .y commodity.* Two commenters in response to the Commerce ANPRM requested confirmation for whether persons classifying items under a .y paragraph would need to have access to an interagency-cleared commodity classification (CCATS) that resulted in a commodity being added to a .y entry on the CCL. No EAR changes are required to address these comments because the existing EAR provisions already address the questions being asked by these two commenters. This IFR notes here that an exporter, reexporter, or transferor classifying a commodity under a .y entry on the CCL does not need access to any related CCATS in order to classify an item under a .y entry. To be classified under a .y entry on the CCL, the commodity in question would need to meet two criteria: (1) the commodity meets the described control parameter description in a .y paragraph (e.g., 9A515.y); and (2) the item in question is “specially designed” for a referenced

item or category in the respective .y paragraph.

For example, this IFR adds new 9A515.y.7, which will control public address (PA) systems. The first part of the classification analysis would be to determine if the commodity is a public address (PA) system. The second part of the analysis would determine whether that PA system was “specially designed” for defense articles described in USML Category XV or items controlled by 9A515.

If in response to a CCATS submission requesting a release from “specially designed” for purposes of 9A515.x, Commerce, State, and Defense concur that such a commodity may be released from “specially designed,” and that the person that submitted the CCATS, along with any other exporter, reexporter, or transferor that person shared the CCATS determination with, may rely on that interagency CCATS determination and the paragraph (b)(1) release from “specially designed.” In these types of scenarios, BIS would subsequently revise the respective .y paragraph, such as 9A515.y in this example to add a description of the commodity that was designated as being a 9A515.y commodity, provided it was also “specially designed” for purposes of that respective .y paragraph. BIS welcomes comments on this clarification in response to these comments submitted in response to the IFR.

ix. *Addition of Note 6 to 9A515 to further specify control for items operating on other celestial bodies.* This IFR adds new Note 6 to 9A515 to specify that an item, such as a rover, operating on any celestial body other than Earth is treated as if it is on Earth for classification purposes on the CCL. This will clarify the control status for rovers and similar types of items that may be used on other celestial bodies, but otherwise generally have no special attributes that would warrant treating them differently from an export control perspective because the object can operate on Earth as well as other celestial bodies.

c. ECCN 9A604

i. *Removal of ECCN 9A604.a and .b to clarify the jurisdictional control status of certain thermal batteries.* This IFR removes ECCN 9A604.a and .b, which prior to this IFR included control parameters for certain thermal batteries. However, the USML also included control parameters for the same types of thermal batteries, which has resulted in questions from the public on the correct export control jurisdiction for these types of thermal batteries. The USML

Order of Review and CCL Order of Review address such a scenario when there is an actual or a perceived overlap between the control parameters included on the two respective control lists by specifying that the USML takes precedence over the CCL. To remove any potential ambiguity regarding the jurisdictional status of such thermal batteries, this IFR removes and reserves 9A604.a and .b. This IFR adds in ECCN 9A604 a new Related Controls paragraph (3) to specify that thermal batteries for USML Category IV items are subject to the ITAR and include a parenthetical cross reference to see 22 CFR 121.1, USML Category XIII for such thermal batteries.

Two commenters in response to the Commerce ANPRM stated that the same thermal batteries for USML Category IV items are described on both the USML and the CCL. These two commenters requested that State and Commerce consider removing these specific types of thermal batteries from the USML Category XIII(h)(3) entry, as they are sufficiently controlled under ECCN 9A604.a, and the double entry introduces opportunities for misunderstanding within industry. BIS agrees that the CCL parameters for thermal batteries in ECCN 9A604 overlap with the control parameters in Category XIII(h)(3). The CCL Order of Review addresses this scenario with the USML control taking jurisdictional precedence over the CCL control for these thermal batteries. This IFR removes and reserves ECCN 9A604.a and .b to address this overlap.

ii. *Clarification to 9A604.x to add a cross reference to 9A604.y.* This IFR revises 9A604.x to add a reference to 9A604.y to exclude commodities described in 9A604.y from the scope of 9A604.x. In order to be classified under 9A604.y, the item in question would need to meet the description under the respective 9A604.y “items” paragraph and the definition of “specially designed.” Items that meet both of those criteria are not classified under 9A604.x.

iii. *Addition of 9A604.y.1 paragraph under y.*

This IFR adds .y paragraph y.1 (“Parts” and minor “components” for landing leg assemblies) to identify specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this entry, ECCN 9A604, or for a defense article in USML Category IV and not elsewhere specified on the USML or on the CCL, and other commodities, as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed”

therefor. To comply with Office of Federal Register (OFR) drafting requirements, this IFR also reserves paragraph y.2.

This IFR, as a conforming change to the addition of 9A604.y, revises the License Requirements section under 9A604, to add an RS control for 9A604.y that applies to China, Russia, or Venezuela (see 15 CFR 742.6(a)(7)). This IFR also adds this RS license requirement for consistency with other “600 series” and 9x515 ECCNs that include a .y “items” paragraph. The addition of the RS license requirement to 9A604.y is a conforming change with the license requirements that apply for other .y items in other “600 series” and 9x515 ECCNs to ensure that such .y items this IFR adds to 9A604.y may not be exported or reexported to China, Russia, or Venezuela without a BIS authorization. BIS welcomes comments identifying any major “components” for landing leg assemblies or certain landing leg assemblies that may warrant consideration for adding to 9A604.y.1.

d. ECCN 9D515

i. *Excluding the new 9D515.x from the NS1 and RS1 license requirement and adding a license requirement for NS2 and RS2 to 9D515.x.* This IFR revises the License Requirements for ECCN 9D515 to add an exclusion for the new 9D515.x from the license requirement for NS1 and RS1 in the License Requirements section. This IFR, as a conforming change, also revises the NS2 and RS2 license requirement in the License Requirements section to impose a license requirement on 9D515.x.

ii. *Addition of 9D515.x.* This IFR adds a new 9D515.x to control “software” “specially designed” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.x. A “software” control for 9A515.x was intended for 9D515.x, but prior to this IFR was not included. Other “items” paragraphs of 9D515 may have already controlled such “software,” but to make it more explicit and easier for persons classifying the “software” under this ECCN, this IFR adds this new 9D515.x. As a conforming change for the addition of new 9D515.x, this IFR reserves “items” paragraphs f. through w. under 9D515.

e. ECCN 9E515

i. *Excluding the new 9E515.x from the NS1 and RS1 license requirement and adding a license requirement for NS2 and RS2 to 9E515.x.* This IFR revises the License Requirements for ECCN 9E515 to add an exclusion for new 9E515.x from the license requirement for NS1

and RS1. This IFR also revises the license NS2 and RS2 license requirement in the License Requirements section to impose a license requirement on 9E515.x to ensure an appropriate control will be in place to protect U.S. national security and foreign policy interests for this technology.

ii. *Addition of 9E515.x.* This IFR adds a new 9E515.x to control “technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.x. As a conforming change for the addition of new 9E515.x, this IFR reserves “items” paragraphs g. through .w under 9E515.

iii. *Request to narrow the scope of “technology” controlled under 9E515.* A commenter in response to the Commerce ANPRM requested that BIS limit the control on repair technology under ECCN 9E515 to things like “investigations into” anomalies and exclude specific operations in response to those anomalies. This IFR notes here that these types of classification questions are addressed by reviewing the definition of “required,” which refines the scope of the control to what “technology” is intended to be controlled under a particular technology entry. BIS does not believe any regulatory changes are needed to address this comment, but BIS welcomes comments on this clarification that reviewing the definition of “required” sufficiently addresses this comment.

2. Specifying the BIS Determination That Space Act Agreements (SAA) to Which the National Aeronautics Space Agency (NASA) is a Party Meet the Criteria Under License Exception GOV Under § 740.11(b)(2)(ii) and (b)(2)(iii)(B) and (C)

In § 740.11 (Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV)), this IFR revises the paragraph (b)(1) (Scope) by adding a new sentence at the end of that paragraph to specify that for purposes of paragraphs (b)(2)(ii) and (b)(2)(iii)(B) and (C) of that section, BIS has determined that an SAA to which NASA is a party meets the criteria of these three paragraphs for being ‘authorized by law and subject to control by the President by other means.’

3. Clarification on Shipments to Launch Platforms Located in International Waters

In § 744.7 (Restrictions on certain exports to and for the use of certain foreign vessels or aircraft) this IFR adds a new Note 1 to paragraph (a) to clarify that a shipment or transmission of items to a launch platform or facility in international waters is treated as an “export” or “reexport” to the country or countries the platform or facility is owned by, controlled by, or being operated on behalf of.

Public comments in response to the Commerce ANPRM noted that launches from platforms in international waters are now possible and will likely increase in the future, as well as other space-related launch activities in international waters. The comments asked for BIS to clarify how shipments to international waters would be treated, in particular for countries of concern, such as those destinations identified in Country Groups D:1, D:4, or D:5. This IFR addresses this issue by adding new Note 1 to paragraph (a), which imposes a license requirement under § 744.7 based on the underlying CCL-based license requirement that does require a license for all 9x515, 9A004, and 9A604 items when exported or reexported to a Country Group D:1, D:4, or D:5 country, as well as to most other destinations. BIS welcomes comments from the public on the scope of this Note to paragraph (a).

One commenter in response to the Commerce ANPRM requested additional guidance be provided for how launch, landing and related activities that occur in the ocean are addressed under the EAR. This commenter noted that the EAR does not clearly identify where in the ocean the United States begins and ends, making it difficult to determine what constitutes an “export” when spacecraft and related items subject to the EAR are moved into the ocean for launching or landing a rocket or spacecraft. In addition, if a U.S. person owns and remains in possession and control of such items when taking them from U.S. soil into the ocean, the current regulations still appear to require a license, even if there is no foreign person involvement. This IFR notes here that the definition of “United States” in § 772.1 of the EAR defines what is considered the “United States” for purposes of the EAR, along with the definition of “export” in § 734.13 (Export). To address “exports” to international waters, this IFR makes revisions to § 744.7, which are responsive to this comment requesting additional clarification for how such

“exports” are controlled under the EAR. BIS notes here that the clarification addresses this issue primarily as it relates to spacecraft and related items. BIS welcomes comments on this change, including whether commenters believe any additional clarifications should be made to the EAR to address these “exports,” as well as “reexports,” to international waters scenarios.

4. Addition of License Exception GOV Paragraph (e) Eligibility for ECCN 9A004 When Needed in Russia on Short Notice for Launch to the International Space Station (ISS)

This IFR revises § 746.8(c)(2)(ii) of the Russian and Belarus sanctions that specifies that License Exception GOV under § 740.11(b) may overcome the license requirements in paragraphs (a)(1), (2), and (4) through (7) of § 746.8. This IFR adds a sentence to the end of this paragraph to specify that License Exception GOV under § 740.11(e) may overcome the license requirements in paragraphs (a)(1) and (2) of § 746.8 for ECCN 9A004. This IFR adds this additional license exception eligibility by taking into account the current exclusion in the RS control in 9A004 that excludes these 9A004.y commodities from the RS license requirement for Russia when the commodities are for use in, with, or for the International Space Station (ISS), including launch to the ISS, as well as this IFR adding more commodities to ECCN 9A004.y. When these ECCN 9A004 commodities are needed to be exported or reexported to or transferred within Russia on short notice for launch to the ISS and the export, reexport, or transfer (in-country) is not otherwise restricted under the general restrictions under § 740.2 and meets all of the applicable requirements of § 740.11(e), authorizing these exports, reexports, and transfers (in-country) are consistent with U.S. national security and foreign policy interests.

Savings Clause

For the changes being made in this interim final rule, shipments of items removed from eligibility for a License Exception on export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were *en route* aboard a carrier to a port of export, reexport, or transfer (in-country), on [INSERT DATE OF PUBLICATION IN THE **Federal Register**], pursuant to actual orders for

export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception on export, reexport, or transfer (in-country) without a license (NLR), provided the export, reexport, or transfer (in-country) is completed no later than on November 22, 2024.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. In particular, and as noted elsewhere, Section 1753 of ECRA (50 U.S.C. 4812) authorizes the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction. Further, Section 1754(a)(1)–(16) of ECRA (50 U.S.C. 4813(a)(1)–(16)) authorizes, *inter alia*: (1) the establishment of a list of controlled items; (2) the prohibition of unauthorized exports, reexports, and transfers (in-country); (3) the requirement of licenses or other authorizations for exports, reexports, and transfers (in-country) of controlled items; (4) the apprising of the public of changes in policy, regulations, and procedures; and (5) any other action necessary to carry out ECRA that is not otherwise prohibited by law. Pursuant to Section 1762(a) of ECRA (50 U.S.C. 4821(a)), these changes can be imposed in a final rule without prior notice and comment.

Rulemaking Requirements

1. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects and distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been designated a “significant regulatory action” under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required

to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096, “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute;
- 0694–0122, “Licensing Responsibilities and Enforcement;” and
- 0607–0152, “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission.

This rule changes the respondent burden for control number 0694–0088 by reducing the estimated number of submissions by 400, which is expected to reduce the current approved estimates, which will result in a reduction of 196 burden hours saved and cost savings to the public of \$7,448 under this collection. The respondent burden under controls numbers 0694–0096 and 0607–0152 are not anticipated to change as a result of this interim final rule. Current information regarding all three collections of information—including all background materials—can be found at: <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

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

4. Pursuant to section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

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

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research,

Science and technology.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 734, 740, 744, 746, and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 1, 2023, 88 FR 75475.

■ 2. Section 734.10 is amended by:

- a. By removing the word “and” at the end of paragraph (b)(1)(iii) and adding in its place the word “or”; and
- b. Adding paragraph (b)(1)(iv) to read as follows:

§ 734.10 Patents and standards-related activity.

* * * * *

(b) * * *

(1) * * *

(iv) “Software” that is classified under ECCN 9D515 (other than 9D515.d or .e); and “technology” classified under ECCN 9E515.a, .b, or .f (limited to technology for 9A515.a.4), when the

release is for a “standards-related activity;” and

* * * * *

PART 740—LICENSE EXCEPTIONS

■ 3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Section 740.11 is amended by adding a new sentence at end of paragraph (b)(1) to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(b) * * *

(1) * * * For purposes of paragraphs (b)(2)(ii), (b)(2)(iii)(B) and (C) of this section, BIS has determined that a Space Act Agreement (SAA) to which the National Aeronautics Space Agency (NASA) is a party meets the criteria of these paragraphs for being authorized by law and subject to control by the President by other means.

* * * * *

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 5. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 18, 2024, 89 FR 77011 (September 20, 2024).

■ 6. Section 744.7 is amended by adding Note 1 to paragraph (a) to read as follows:

§ 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(a) * * *

Note 1 to paragraph (a): A shipment or transmission of items to a launch platform or facility in international waters is an “export” or “reexport” to the country or countries the platform or facility is owned by, controlled by, or being operated on behalf of.

* * * * *

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 7. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 8, 2024, 89 FR 40355 (May 9, 2024).

■ 8. Section 746.8 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 746.8 Sanctions against Russia and Belarus.

(c) * * *

(2) * * *

(ii) License Exception GOV (§ 740.11(b) of the EAR) may overcome the license requirements in paragraphs (a)(1), (2), and (4) through (7) of this section. License Exception GOV under (§ 740.11(e) of the EAR) may overcome the license requirements in paragraphs (a)(1) and (2) of this section for ECCN 9A004.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 9. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 10. Supplement no. 1 to part 774 is amended by revising ECCNs 9A004, 9A515, 9A604, 9D515, 9E515, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

9A004 Space launch vehicles and “spacecraft,” “spacecraft buses,” “spacecraft payloads,” “spacecraft” on-board systems or equipment, terrestrial equipment, and air-launch platforms, and “sub-orbital craft,” as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to 9A004.g, .r, .u, and .w.	NS Column 1.
NS applies to 9A004.s, .v, and .x.	NS Column 2.
RS applies to 9A004.y ...	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to 9A004.g, .s, .u, .v, .w, .x, and .y.	AT Column 1.

License Requirement Note: ECCN 9A004.a through .f apply to certain space launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, on-board systems or equipment, and terrestrial equipment. They are described in ECCN 9A004.a through .f in order to harmonize 9A004 with the Wassenaar Arrangement Dual-Use List, even though the controls for these items are found under ECCN 9A515 and direct exporters, reexporters, and transferors to see USML Category IV for 9A004.a. See USML Category IV for 9A004.a. See ECCN 9A515 for 9A004.b through .f, and .h. See this ECCN 9A004 for .g, .h, .r, and .u through .y.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

List of Items Controlled

Related Controls: (1) See also 9A104, 9A515, and 9B515. (2) See ECCNs 9E001 (“development”) and 9E002 (“production”) for technology for items controlled by this entry. (3) See USML Categories IV for the space launch vehicles and XV for other spacecraft that are “subject to the ITAR.”

Related Definition: N/A
Items:

- a. Space launch vehicles.
- b. “Spacecraft.”
- c. “Spacecraft buses.”
- d. “Spacecraft payloads” incorporating items specified by 3A001.b.1.a.4 or z (if also described in 3A001.b.1.a.4), 3A002.g, 5A001.a.1, .b.3, 5A002.c, z.3 or z.8, .e, z.5, 6A002.a.1, a.2, .b, .d, 6A003.b, 6A004.c, .e, 6A008.d, .e, .k, .l or 9A010.c.
- e. On-board systems or equipment, “specially designed” for “spacecraft” and having any of the following functions:
 - e.1. ‘Command and telemetry data handling;’

Note 1 to 9A004.e.1: For the purpose of 9A004.e.1, ‘command and telemetry data handling’ includes bus data management, storage, and processing.

e.2. ‘Payload data handling;’ or
Note 2 to 9A004.e.2: For the purpose of 9A004.e.2, ‘payload data handling’ includes payload data management, storage, and processing.

e.3. ‘Attitude and orbit control;’
Note 3 to 9A004.e.3: For the purpose of 9A004.e.3, ‘attitude and orbit control’ includes sensing and actuation to determine and control the position and orientation of a “spacecraft.”

f. Terrestrial equipment specially designed for “spacecraft,” as follows:

f.1. Telemetry and telecommand equipment “specially designed” for any of the following data processing functions:

f.1.a. Telemetry data processing of frame synchronization and error corrections, for monitoring of operational status (also known as health and safe status) of the “spacecraft bus;” or

f.1.b. Command data processing for formatting command data being sent to the “spacecraft” to control the “spacecraft bus;”

f.2. Simulators “specially designed” for ‘verification of operational procedures’ of “spacecraft.”

Technical Note: For the purposes of 9A004.f.2, ‘verification of operational procedures’ is any of the following:

1. Command sequence confirmation;
2. Operational training;
3. Operational rehearsals; or
4. Operational analysis.

g. “Aircraft” “specially designed” or modified to be air-launch platforms for space launch vehicles or “sub-orbital craft.”

h. “Sub-orbital craft.”

i. through q. [Reserved]

r. In-space habitats, other than the International Space Station (ISS).

Note 4 to 9A004.r: In-space habitats are considered the commercial equivalent of a space station because it is used for persons conducting experiments or space tourism activities.

s. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for in-space habitats in 9A004.r and that are NOT:

- s.1. Described on the USML;
- s.2. Described in ECCN 7A004 or 7A104;
- s.3. Described in an ECCN containing “space-qualified” as a control criterion (refer to 9A515.x.4); or
- s.4. Described in 9A001, 9A002, 9A003, 9A515, or 9A991.

t. [Reserved]

u. The James Webb Space Telescope (JWST) being operated under the supervision of the U.S. National Aeronautics and Space Administration (NASA).

v. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for the James Webb Space Telescope and that are NOT:

- v.1. Described on the USML;
- v.2. Microelectronic circuits;
- v.3. Described in ECCN 7A004 or 7A104;

or

v.4. Described in an ECCN containing “space-qualified” as a control criterion (refer to 9A515.x.4).

w. The International Space Station being operated under the supervision of the U.S. National Aeronautics and Space Administration.

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for the International Space Station.

y. Items that would otherwise be within the scope of ECCN 9A004.s or .x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A004.y.

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Thermistors for spacecraft applications;

y.3. RF microwave bandpass ceramic filters (e.g., Dielectric Resonator Bandpass Filters);

y.4. Hall effect sensors for spacecraft applications;

y.5. Subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors for spacecraft applications;

y.6. Flight cable assemblies for spacecraft applications;

y.7. Public address (PA) systems;

y.8. Audio selector panels;

y.9. Spacecraft crew, passenger, or participant lavatories and body waste management systems;

y.10. Spacecraft crew, passenger, or participant hygiene facilities and systems;

y.11. Spacecraft crew, passenger, or participant crew rest equipment or sleeping quarters;

y.12. Spacecraft crew, passenger, or participant galleys or food preparation or serving systems;

y.13. Spacecraft crew, passenger, or participant entertainment systems;

y.14. Spacecraft crew, passenger, or participant exercise systems;

y.15. Spacecraft crew, passenger, or participant laundry systems;

y.16. Spacecraft crew, passenger, or participant safety systems not including launch abort systems/launch escape systems, ejector seats, spacesuits, flight suits, helmets, or parts and components thereof;

y.17. Spacecraft crew, passenger, or participant storage units, facilities, or systems (for items related to human safety, welfare, and health);

y.18. Spacecraft crew, passenger, or participant medical facilities or health-related systems for monitoring, evaluating, or assessing, or for providing treatments;

y.19. Spacecraft crew, passenger, or participant information systems (e.g., personal laptops and phones);

y.20. Name plates, identification plates, and identification systems;

y.21. Internal, external, and emergency lighting systems;

y.22. Humidity and CO₂ removal systems;

y.23. Potable water storage systems;

y.24. Water regeneration systems;

y.25. Air filters, filter networks, or air quality systems;

y.26. Space heaters, temperature sensors, or thermostats for human habitation;

y.27. Environmental control systems for human habitation;

y.28. Spacecraft environmental control systems (e.g., air conditioner, air distribution, air filtration and sanitation, CO₂ removal, cabin pressure control, dehumidifier, fire suppression system, nitrogen oxygen recharge system, heater systems, thermostats);

y.29. Plant growth systems;

y.30. Fire extinguishers;

y.31. Flame, smoke, or CO₂ detectors;

y.32. Fire suppression systems;

y.33. Spacecraft crew, passenger, or participant seats and parts and components;

y.34. Spaceflight crew, passenger, or participant ejection seat mounted survival aids;

y.35. Spaceflight crew, passenger, or participant life rafts;

- y.36. Spacecraft crew, passenger, or participant locator beacons;
- y.37. Spacecraft crew, passenger, or participant mirrors;
- y.38. Spacecraft crew, passenger, or participant windows;
- y.39. Spacecraft locator beacons;
- y.40. Viewing windows on non-crewed spacecraft;
- y.41. Hydraulic, pneumatic, oil, fuel, gas, propellant, fluid, and thermal control fluid reservoirs, filters, filter assemblies, tubing, lines, hoses, check valves, and quick disconnects, and associated fittings, couplings, clamps, brackets, adapters, valves, gaskets, and shims;
- y.42. Gauges and indicators;
- y.43. Filtered and unfiltered panel knobs, indicators, annunciator panels, switches, buttons and dials;
- y.44. Energy dissipating pads for cargo or crew;
- y.45. Bracket adapters for bus and payload structures;
- y.46. Latches and hinges;
- y.47. Boom assemblies;
- y.48. Multiplexor and Demultiplexors (MUX & DEMUX);
- y.49. Switches, switch bank assemblies, beam select switches, transfer switch assemblies, switch matrices, thermal switches;
- y.50. Magnetic torque bars;
- y.51. Filters, filter networks;
- y.52. Network switches;
- y.53. Antenna feed horns;
- y.54. Diplexers, modulators, demodulators;
- y.55. Backshells, pins, and contacts;
- y.56. Measurement devices;
- y.57. Non Propulsive landing systems (e.g., skids, inflatable);
- y.58. Electrical connectors;
- y.59. Electric fans;
- y.60. Microphones;
- y.61. Speakers;
- y.62. Circuit breakers; and
- y.63. Printed circuit boards.

Note 5 to 9A004: *An item operating on any celestial body other than Earth is treated as if it is on Earth for classification purposes on the CCL.*

* * * * *

9A515 "Spacecraft" and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
NS applies to entire entry, except .e., .x, and .y.	NS Column 1.
RS applies to entire entry, except .e., .x, and .y.	RS Column 1.

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
MT applies to microcircuits in 9A515.d and 9A515.e.2 when "usable in" "missiles" for protecting "missiles" against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41×10^5 newton seconds.	MT Column 1.
NS applies to 9A515.x ...	NS Column 2.
RS applies to 9A515.e and .x.	RS Column 2.
RS applies to 9A515.y ...	China, Russia or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

License Requirement Notes:

(1) *The Commerce Country Chart is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, .a.2, .a.3, .a.4, and .g. See § 742.6(a)(9), which specifies that such commodities are subject to a worldwide license requirement, except to Australia, Canada, and the United Kingdom.*

(2) *ECCN 9A004.a through .f apply to certain space launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, on-board systems or equipment, and terrestrial equipment. They are listed in ECCN 9A004.a through .f in order to harmonize 9A004 with the Wassenaar Arrangement Dual-Use List, even though the controls for these items are found under ECCN 9A515 and to direct exporters, reexporters, and transferors to see USML Category IV for 9A004.a. See USML Category IV for 9A004.a. See ECCN 9A515 for 9A004.b through .f, and .h. See this ECCN 9A004 for .g, .h, .r, .s, and .u through .y.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: \$1500

GBS: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for "spacecraft" in ECCNs 9A515.a.1, a.2, a.3, or a.4, "sub-orbital craft," or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and "600 series" items). (2) License Exception STA may not be used if the "spacecraft" controlled in ECCN 9A515.a.1, a.2, a.3, or a.4 contains a separable or removable propulsion system described in USML Category IV(d)(2) or USML Category XV(e)(12) and designated MT. (3) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

List of Items Controlled

Related Controls: Spacecraft, launch vehicles and related articles that are described on

the USML, and technical data (including "software") directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle, including both planning and onsite support, or furnishing any assistance (including training) in the launch failure analysis or investigation for items in ECCN 9A515.a, are "subject to the ITAR." All other "spacecraft," as enumerated below and defined in § 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific "space-qualified" items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station (ISS), the James Webb Space Telescope (JWST), and "specially designed" "parts" and "components" therefor. See USML Category XI(c) for controls on certain "Monolithic Microwave Integrated Circuit" ("MMIC") amplifiers. See ECCN 9A610.g for pressure suits used for high altitude aircraft.

Related Definitions: "Microcircuit" means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

Items:

"Spacecraft" and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles "subject to the ITAR" integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A515.a "spacecraft" remains "subject to the EAR" even when it is exported, reexported, or transferred (in-country) with a "hosted payload" described in USML Category XV(e)(17) incorporated therein. In all other cases, a "hosted payload" performing a function described in USML Category XV(a) always remains a USML item. The removal of the defense article subject to the ITAR from the spacecraft is a retransfer under the ITAR and would require an ITAR authorization, regardless of the CCL authorization the spacecraft is exported under. Additionally, transfer of technical data regarding the defense article subject to the ITAR integrated into the spacecraft would require an ITAR authorization.

a. "Spacecraft," including satellites, and space vehicles and "sub-orbital craft," whether designated developmental, experimental, research or scientific, not described in USML Category XV or described in ECCN 9A004.r, .u, or .w, that:

a.1. Have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters;

a.2. Have remote sensing capabilities beyond NIR (i.e., SWIR, MWIR, or LWIR);

a.3. Have radar remote sensing capabilities (e.g., AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;

a.4. Provide space-based logistics, assembly, or servicing of another “spacecraft”; or

a.5. Are not described in ECCN 9A515.a.1, .a.2, .a.3 or .a.4.

Note 1 to 9A515: *ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, “sub-orbital craft,” and planetary and interplanetary probes, not identified in ECCN 9A004 or USML Category XV(a).*

b. Equipment for telemetry, tracking, and control, as follows:

b.1. Ground control systems and training simulators “specially designed” for telemetry, tracking, and control of the “spacecraft” controlled in paragraphs 9A004.u or 9A515.a;

b.2. Terrestrial equipment “specially designed” for “spacecraft,” as follows:

b.2.a. Telemetry and telecommand equipment “specially designed” for any of the following data processing functions:

b.2.a.1. Telemetry data processing of frame synchronization and error corrections, for monitoring of operational status (also known as health and safe status) of the “spacecraft bus;” or

b.2.a.2. Command data processing for formatting command data being sent to the “spacecraft” to control the “spacecraft bus;”

b.2.b. [Reserved]

b.3. Simulators “specially designed” for “verification of operational procedures” of “spacecraft.”

Technical Note: *For the purposes of 9A515.b.3, “verification of operational procedures” is any of the following:*

1. Command sequence confirmation;

2. Operational training;

3. Operational rehearsals; or

4. Operational analysis.

c. [Reserved]

d. Microelectronic circuits (e.g., integrated circuits, microcircuits, or MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are “specially designed” for defense articles, “600 series” items, or items controlled by ECCNs 9A004.v or 9A515:

d.1. A total dose of 5×10^5 Rads (Si) (5×10^3 Gy (Si));

d.2. A dose rate upset threshold of 5×10^8 Rads (Si)/sec (5×10^6 Gy (Si)/sec);

d.3. A neutron dose of 1×10^{14} n/cm² (1 MeV equivalent);

d.4. An uncorrected single event upset sensitivity of 1×10^{-10} errors/bit/day or less, for the CREME-MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and

d.5. An uncorrected single event upset sensitivity of 1×10^{-10} errors/part or less for a fluence of 1×10^7 protons/cm² for proton energy greater than 50 MeV.

e. Microelectronic circuits (e.g., integrated circuits, microcircuits, or MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND “specially designed” for defense articles described in USML Category XV or items controlled by ECCNs 9A004.u or 9A515:

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) (1×10^3 Gy (Si)) and $< 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)); and a single event effect (SEE) (i.e., single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) ≥ 80 MeV-cm²/mg; or

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)) and not described in 9A515.d.

Note 2 to 9A515.d and .e: *See USML Category XI for military electronics. See 3A611.f for PLDs and ASICs programmed for 600 series items.*

Note 3 to 9A515.d and .e: *See 3A001.a and .z for controls on radiation-hardened microelectronic circuits “subject to the EAR” that are not controlled by 9A515.d or .e.*

f. Pressure suits (i.e., space suits) capable of operating at altitudes greater than or equal to 55,000 feet above sea level.

g. Remote sensing components “specially designed” for “spacecraft” described in ECCNs 9A515.a.1 through .a.4 as follows:

g.1. Space-qualified optics (i.e., lens, mirror, membrane having active properties (e.g., adaptive, deformable)) with the largest lateral clear aperture dimension equal to or less than 0.35 meters; or with the largest clear aperture dimension greater than 0.35 meters but less than or equal to 0.50 meters;

g.2. Optical bench assemblies “specially designed” for ECCN 9A515.a.1, a.2, a.3, or a.4 “spacecraft;” or

g.3. Primary, secondary, or hosted payloads that perform a function of ECCN 9A515.a.1, a.2, a.3, or a.4 “spacecraft.”

h. Spacecraft thrusters using bi-propellants or mono-propellants that provide thrust equal to or less than 150 lbf (i.e., 667.23 N) vacuum thrust.

i. through w. [RESERVED]

w. “Parts,” “components,” “accessories,” and “attachments” that would otherwise be within the scope of ECCN 9A515.x but that have been identified by the interagency as warranting control in 9A515.w, as follows:

w.1. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for defense articles described in USML Category XV or items controlled by 9A515, and that are NOT:

x.1. Described on the USML or elsewhere within ECCNs 9A515 or 9A004;

x.2. Microelectronic circuits and discrete electronic components;

x.3. Described in ECCNs 7A004 or 7A104;

x.4. Described in an ECCN containing “space-qualified” as a control criterion (i.e., 3A001.b.1, .e.4 or .z, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, .b.2, .d.1, 6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2);

x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 and .z for controls on these items);

x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 and .z for controls on these items); or

x.7. Elsewhere specified in ECCN 9A515.y.

Note 4 to 9A515.x: *“Parts,” “components,” “accessories,” and “attachments” described on the USML, either in Category XV(e) or elsewhere, are subject to the ITAR.*

Note 5 to 9A515.b and .x: *This note clarifies the scope of controls over baseband units (BBU). For purposes of 9A515.b and .x,*

a BBU means a device that interprets the original frequency range of a transmission signal. These devices are not controlled under 9A515.b or .x when they do not perform telemetry, track, and control.

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Thermistors for spacecraft applications;

y.3. RF microwave bandpass ceramic filters (e.g., Dielectric Resonator Bandpass Filters);

y.4. Hall effect sensors for spacecraft applications;

y.5. Subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors for spacecraft applications;

y.6. Flight cable assemblies for spacecraft applications;

y.7. Public address (PA) systems;

y.8. Audio selector panels;

y.9. Spacecraft crew, passenger, or participant lavatories and body waste management systems;

y.10. Spacecraft crew, passenger, or participant hygiene facilities and systems;

y.11. Spacecraft crew, passenger, or participant crew rest equipment or sleeping quarters;

y.12. Spacecraft crew, passenger, or participant galleys or food preparation or serving systems;

y.13. Spacecraft crew, passenger, or participant entertainment systems;

y.14. Spacecraft crew, passenger, or participant exercise systems;

y.15. Spacecraft crew, passenger, or participant laundry systems;

y.16. Spacecraft crew, passenger, or participant safety systems, not including launch abort systems/launch escape systems, ejector seats, spacesuits, flight suits, helmets, or “parts” and “components” therefor;

y.17. Spacecraft crew, passenger, or participant storage units, facilities, or systems (for items related to human safety, welfare, and health);

y.18. Spacecraft crew, passenger, or participant medical facilities or health-related systems for monitoring, evaluating, or assessing, or for providing treatments;

y.19. Spacecraft crew, passenger, or participant information systems (e.g., personal laptops and phones);

y.20. Name plates, identification plates, and identification systems;

y.21. Internal, external, and emergency lighting systems;

y.22. Humidity and CO₂ removal systems;

y.23. Potable water storage systems;

y.24. Water regeneration systems;

y.25. Air filters, filter networks, or air quality systems;

y.26. Space heaters, temperature sensors, or thermostats for human habitation;

y.27. Environmental control systems for human habitation;

y.28. Spacecraft environmental control systems (e.g., air conditioner, air distribution, air filtration and sanitation, CO₂ removal,

cabin pressure control, dehumidifier, fire suppression system, nitrogen oxygen recharge system, heater systems, thermostats);

- y.29. Plant growth systems;
- y.30. Fire extinguishers;
- y.31. Flame, smoke, or CO₂ detectors;
- y.32. Fire suppression systems;
- y.33. Spacecraft crew, passenger, or participant seats, other than ejection seats, and “parts” and “components;”
- y.34. Spaceflight crew, passenger, or participant ejection seat mounted survival aids;
- y.35. Spaceflight crew, passenger, or participant life rafts;
- y.36. Spacecraft crew, passenger, or participant locator beacons;
- y.37. Spacecraft crew, passenger, or participant mirrors;
- y.38. Spacecraft crew, passenger, or participant windows;
- y.39. Spacecraft locator beacons;
- y.40. Viewing windows on non-crewed spacecraft;
- y.41. Temperature sensors and pressure transducers;
- y.42. Thermal control pumps, accumulators, fluid filters and filter assemblies, control valves, heat exchangers, and radiators;
- y.43. Hydraulic, pneumatic, oil, fuel, gas, propellant, fluid, and thermal control fluid reservoirs, filters, filter assemblies, tubing, lines, hoses, check valves, and quick disconnects, and associated fittings, couplings, clamps, brackets, adapters, valves, gaskets, shims, and o-rings;
- y.44. Gauges and indicators;
- y.45. Filtered and unfiltered panel knobs, indicators, annunciator panels, switches, buttons and dials;
- y.46. Spacecraft tires and brake systems (does not include sintered mix or carbon/carbon materials);
- y.47. Bearings (e.g., Ball, roller, wheel);
- y.48. Energy dissipating pads for cargo or crew;
- y.49. Spacecraft bus structures;
- y.50. Bracket adapters for bus and payload structures;
- y.51. Latches and hinges;
- y.52. Boom assemblies;
- y.53. Cables, cable assemblies, and connectors;
- y.54. Batteries and associated battery management circuitry;
- y.55. Germanium coated polyimide tapes (e.g., Kapton tape);
- y.56. Multiplexors and Demultiplexors (MUX & DEMUX);
- y.57. Switches, switch bank assemblies, beam select switches, transfer switch assemblies, switch matrices, thermal switches;
- y.58. Magnetic torque bars;
- y.59. Filters, filter networks;
- y.60. Network switches;
- y.61. Reflectors, antennas;
- y.62. Antenna feed horns;
- y.63. Diplexers, modulators, demodulators;
- y.64. Second surface mirrors;
- y.65. Backshells, pins and contacts;
- y.66. Measurement devices;
- y.67. Electrical power distribution and control units;

- y.68. Electrical connectors;
- y.69. Non-propulsive landing systems (e.g., skids, inflatable);
- y.70. Electric fans;
- y.71. Microphones;
- y.72. Speakers;
- y.73. Circuit breakers; and
- y.74. Printed circuit boards “specially designed” for items classified under 9A515.y

Note 6 to 9A515: *An item operating on any celestial body other than Earth is treated as if it is on Earth for classification purposes on the CCL.*

9A604 Commodities related to launch vehicles, missiles, and rockets (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT, UN

<i>Control(s)</i>	<i>Country chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
MT applies to 9A604.c, .d, and .f.	MT Column 1.
RS applies to 9A604.y ...	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9A604.

List of Items Controlled

Related Controls: (1) Launch vehicles, missiles, and rockets are subject to the ITAR (see USML Category IV). (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content. (3) Thermal batteries for USML Category IV items are subject to the ITAR (see USML Category XIII).

Related Definitions: N/A

Items:

- a. through b. [Reserved]
- c. “Components” “specially designed” for ramjet, scramjet, pulse jet, or combined cycle engines described in USML Category IV, including devices to regulate combustion in such commodities.
- d. “Components” “specially designed” for hybrid rocket motors described in USML Category IV usable in rockets, missiles, or unmanned aerial vehicles capable of a range equal to or greater than 300 km.
- e. “Components” “specially designed” for pressure gain combustion-based propulsion systems described in USML Category IV.
- f. Composite structures, laminates and manufactures thereof “specially designed” for the following items described in USML Category IV:

- f.1. Systems capable of a range equal to or greater than 300 km;
- f.2. Individual rocket stages usable in 9A604.f.1. systems;
- f.3. Solid propellant rocket motors or hybrid rocket motors having a total impulse capacity equal to or greater than 8.41×10^5 Ns; or

f.4. Liquid propellant rocket engines integrated, or designed or modified to be integrated, into a liquid propellant propulsion system which has a total impulse capacity equal to or greater than 8.41×10^5 Ns.

f.5. Thrust vector control systems usable in rockets, space launch vehicles (SLVs), and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

f.6. Re-entry vehicles or warhead heat shields usable in rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

f.7. Safing, arming, fuzing, and firing components usable in rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

g. through w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraphs .a through .d of this ECCN, or a defense article described in USML Category IV, and not specified elsewhere on the USML or in 9A604.y.

Note to 9A604.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this entry, ECCN 9A604, or for a defense article in USML Category IV and not elsewhere specified on the USML or on the CCL, and other commodities, as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

- y.1. “Parts” and minor “components” for landing leg assemblies; and
- y.2. [RESERVED]

* * * * *

9D515 “Software” “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

<i>Control(s)</i>	<i>Country chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry except 9D515.x and y.	NS Column 1.
RS applies to entire entry except 9D515.x and y.	RS Column 1.
NS applies to 9D515.x ...	NS Column 2.
RS applies to 9D515.x ...	RS Column 2.
RS applies to 9D515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7)).

Control(s) Country chart
(See Supp. No. 1 to part
738)

AT applies to entire entry AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D515.b, .d, or .e. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “software” in 9D515.

List of Items Controlled

Related Controls: (1) “Software” directly related to articles described in USML Category XV is subject to the ITAR. (2) See also ECCNs 3D001, 6D001, 6D002, and 6D991 for controls of specific “software” “specially designed” for certain “space-qualified” items. (3) For “software” for items listed in 9A004.d that are incorporated into “spacecraft payloads”, see the appropriate “software” ECCN within those Categories.

Related Definitions: N/A

Items:

a. “Software” (other than “software” controlled in paragraphs .b, .d, or .e of this entry) “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.d, .e, or .x) or 9B515.

b. “Source code” that:

b.1. Contains the algorithms or control principles (e.g., for clock management), precise orbit determination (e.g., for ephemeris or pseudo range analysis), signal construct (e.g., pseudo-random noise (PRN) anti-spoofing) “specially designed” for items controlled by ECCN 9A515;

b.2. Is “specially designed” for the integration, operation, or control of items controlled by ECCN 9A515;

b.3. Contains algorithms or modules “specially designed” for system, subsystem, component, part, or accessory calibration, manipulation, or control of items controlled by ECCN 9A515;

b.4. Is “specially designed” for data assemblage, extrapolation, or manipulation of items controlled by ECCN 9A515;

b.5. Contains the algorithms or control laws “specially designed” for attitude, position, or flight control of items controlled in ECCN 9A515; or

b.6. Is “specially designed” “for built-in test and diagnostics for items controlled by ECCN 9A515.

c. [Reserved]

d. “Software” “specially designed” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.d.

e. “Software” “specially designed” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.e.

f. through w. [Reserved]

x. “Software” “specially designed” for the “development,” “production,” operation,

failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.x. y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A515.y.

* * * * *

9E515 “Technology” “required” for the “development,” “production,” operation, installation, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except 9E515.x and .y.	NS Column 1.
RS applies to entire entry except 9E515.x and .y.	RS Column 1.
MT applies to technology for items in 9A515.d, .e.2, .h, and 9B515.a controlled for MT reasons.	MT Column 1.
NS applies to 9E515.x ...	NS Column 2.
RS applies to 9E515.x ...	RS Column 2.
RS applies to 9E515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

License Requirement Note: The Commerce Country Chart is not used for determining license requirements for “technology” classified ECCN 9E515.f. See § 742.6(a)(9), which specifies that such “technology” is subject to a worldwide license requirement, except to Australia, Canada, and the United Kingdom.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ECCN 9E515.b, .d, .e, or .f unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and “600 series” items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “technology” in 9E515.

List of Items Controlled

Related Controls: Technical data directly related to articles described in USML Category XV are subject to the ITAR. See also ECCNs 3E001, 3E003, 6E001, and 6E002 for specific “space-qualified” items. See ECCNs 9E001 and 9E002 for technology for the International Space Station, the James Webb Space Telescope (JWST) and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor. See USML

Category XV for controls on technical data and defense services related to launch vehicle integration.

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.a.1, a.2, a.3, a.4, .b, .d, .e, or .g), ECCN 9B515, or “software” controlled by ECCN 9D515.a.

b. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of software controlled by ECCN 9D515.b.

c. [Reserved]

d. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.d.

e. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.e.

f. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515.a.1, a.2, a.3, a.4, or .g.

g. through w. [Reserved]

x. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.x.

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A515.y or 9D515.y.

Note 1: [Reserved]

Note 2: Activities and technology/technical data directly related to or required for the spaceflight (e.g., sub-orbital, orbital, lunar, interplanetary, or otherwise beyond Earth orbit) passenger or participant experience, regardless of whether the passenger or participant experience is for space tourism, scientific or commercial research, commercial manufacturing/production activities, educational, media, or commercial transportation purposes, are not subject to the ITAR or the EAR. Such activities and technology/technical data include those directly related to or required for:

(i) “Spacecraft” access, ingress, and egress, including the operation of all “spacecraft” doors, hatches, and airlocks;

(ii) Physiological training (e.g., human-rated centrifuge training or parabolic flights, pressure suit or spacesuit training/operation);

(iii) Medical evaluation or assessment of the spaceflight passenger or participant;

(iv) Training for and operation by the passenger or participant of health and safety related hardware (e.g., seating, environmental control and life support, hygiene facilities, food preparation, exercise equipment, fire suppression, communications equipment, safety-related clothing or headgear) or emergency procedures;

(v) Viewing of the interior and exterior of the spacecraft or terrestrial mock-ups;

(vi) Observing “spacecraft” operations (e.g., pre-flight checks, landing, in-flight status);

(vii) Training in “spacecraft” or terrestrial mock-ups for connecting to or operating

passenger or participant equipment used for purposes other than operating the “spacecraft”; or

(viii) Donning, wearing or utilizing the passenger’s or participant’s flight suit,

pressure suit or spacesuit, and personal equipment.

* * * * *

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.

[FR Doc. 2024–23958 Filed 10–17–24; 4:15 pm]

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DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 740 and 774**

[Docket No. 241004–0265]

RIN 0694–AH66

Export Administration Regulations: Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities (CSA)**AGENCY:** Bureau of Industry and Security, Department of Commerce.**ACTION:** Proposed rule.

SUMMARY: In this proposed rule, the Bureau of Industry and Security (BIS) proposes changes to controls for spacecraft and related items under the Export Administration Regulations (EAR) that would conform to proposed changes to the International Traffic in Arms Regulations (ITAR) related to U.S. Munitions List (USML) Categories IV and XV. This rule also proposes the addition of a new license exception for certain Commercial Space Activities (CSA). This proposed rule is published alongside the Department of State proposed rule, “International Traffic in Arms Regulations (ITAR): U.S. Munitions List Categories IV and XV” (1400–AE73), which includes proposed changes for certain space-related defense articles and related controls. These proposed rules are intended to better enable a globally competitive U.S. space industrial base while continuing to protect U.S. national security and foreign policy interests.

DATES: Comments must be received by BIS no later than November 22, 2024.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal at: <https://www.regulations.gov>. The *regulations.gov* ID for this rule is: BIS–2018–0029. Please refer to RIN 0694–AH66 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version

should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” Any submissions with file names that do not begin with either a “BC” or a “P” will be assumed to be public and will be made publicly available at: <https://www.regulations.gov>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT:

- For technical questions, contact Joseph A. Cristofaro, Director, Sensors, Aerospace and Marine Division, Office of National Security Controls, Bureau of Industry and Security, U.S. Department of Commerce, at (202)–482–2440 or by email: Joseph.Cristofaro@bis.doc.gov.

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SUPPLEMENTARY INFORMATION:**I. Background***A. National Space Council Direction To Review Space Export Controls*

On December 20, 2023, the National Space Council convened to discuss U.S. leadership in space. The Departments of State and Commerce (hereinafter, State and Commerce, respectively) were subsequently tasked to “conduct a review of space export controls to enable a globally competitive U.S. industrial base while protecting our national security and foreign policy interests” (see The White House FACT SHEET: Strengthening U.S. International Space Partnerships released on December 20, 2023). In response to the tasking, and pursuant to its authorities under the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852), BIS is publishing concurrently with this proposed rule, the Commerce final rule, “*Export Administration Regulations: Removal of License Requirements for Certain Spacecraft and Related Items for Australia, Canada, and the United Kingdom*” (0694–AJ85). That final rule

makes important changes to the EAR’s controls on remote sensing and space-based logistics, assembly, and servicing spacecraft and related items to better rationalize the controls and facilitate collaboration with three close allies of the United States (*i.e.*, Australia, Canada, and the United Kingdom), as directed by the Space Council tasking.

In addition, in response to the tasking, BIS is also publishing concurrently with this proposed rule a Commerce interim final rule, “*Export Administration Regulations: Revisions to Space-Related Export Controls*” (0694–AJ87) and that Commerce final rule that will build on the space-related export control revisions for Australia, Canada, and the United Kingdom by further reducing the export control requirements on certain space-related items when destined to U.S. allies and partners (including, but not limited to Australia, Canada and the United Kingdom).

This proposed rule builds on those two rules, to propose EAR changes that would conform to proposed changes to the ITAR (22 CFR parts 120–130), including those related to USML Categories IV and XV. This rule also proposes the addition of a new EAR License Exception for certain Commercial Space Activities (CSA). This proposed rule is published concurrently with the Department of State proposed rule, “International Traffic in Arms Regulations (ITAR): U.S. Munitions List Categories IV and XV” (1400–AE73), which proposes changes to controls under the ITAR for certain space-related defense articles and related controls in response to the same tasking. Although the two rules are complementary and published concurrently, they are not published in conjunction as joint rules.

These proposed changes are intended to better enable a globally competitive U.S. space industrial base while continuing to protect U.S. national security and foreign policy interests. BIS welcomes public comment on the impact of the changes proposed in this rule, as well as any additional changes to the EAR’s space-related export controls that could enable a globally competitive U.S. space industrial base while protecting U.S. national security and foreign policy interests.

In 2023–2024, BIS, in coordination with the National Aeronautics and Space Administration (NASA) and the National Oceanic and Atmospheric Administration (NOAA) conducted a survey and assessment of organizations affiliated with NASA, NOAA, and the broader U.S. Civil Space Industrial Base (CSIB). The resulting data included respondents’ aggregated views on

current export control regulations, as well as suggestions for revisions, and has been broadly used to inform this proposed rule.

B. Past Activities To Review Spacecraft and Related Controls Under Departments of State and Commerce Export Control Authorities

On March 8, 2019, the Department of Commerce (Commerce) and the Department of State (State) published two advanced notices of proposed rulemaking (ANPRMs) (84 FR 8485 and 84 FR 8486, respectively) seeking input on potential revisions to export controls related to satellites and spacecraft under the ITAR (22 CFR parts 120–130) and EAR (15 CFR parts 730–774). In public comments received in response to those ANPRMs, and during subsequent export control outreach events and interagency meetings to review space and related items export controls, industry and interagency representatives proposed several amendments to the EAR to support more robust international partnerships, improve the consistency and clarity of the EAR, and ensure that, whenever possible, U.S. policies are not putting U.S. industries at a comparative disadvantage. Building on the 2019 ANPRMs and as part of its activities described under section I.A of this proposed rule, the National Space Council tasked State and Commerce in December 2023 with conducting a review of space export controls to enable a globally competitive U.S. industrial base while protecting national security and foreign policy interests. Based on that initial interagency review, and pursuant to its authorities under ECRA, Commerce proposes the regulatory changes described in section II of this proposed rule.

In response to the Commerce ANPRM, BIS received 19 public comments. The 19 comments submitted in response to the Commerce ANPRM consisted of comments from 12 major companies in the space industry, four trade associations with large representation from the space industry, two universities well known for their research activities in space related issues, and one individual. BIS summarizes those comments into 22 topics, which BIS addresses under section I.C. BIS has reviewed these comments and used them to help inform interagency review of export controls on space and related items. In this proposed rule, BIS summarizes and responds to these 22 topics received in response to the Commerce ANPRM with either regulatory changes or in clarifications made in the preamble.

BIS also notes that a large number of the comments received on the Commerce ANPRM, which were also submitted to State in response to the State ANPRM, requested that additional space-related defense articles be moved from the U.S Munitions List (USML) to the Commerce Control List (CCL). BIS considered those ITAR specific comments as part of the interagency review process that included State but does not further act upon them here because State has the statutory authority as delegated by the President to the Secretary of State to designate those items that are defense articles and defense services for purposes of the ITAR.

BIS is publishing this proposed rule alongside the State proposed rule to propose appropriate EAR controls for the items that State proposes to remove from the USML.

BIS reviewed all relevant comments submitted in response to the Commerce ANPRM and responds to them directly, as appropriate, in the discussion of the regulatory changes in section II of this proposed rule.

C. Public Comments in Response to Commerce 2019 ANPRM

Topic 1: Supportive of moving items from USML to CCL. Commenters on the Commerce ANPRM were generally supportive of the effort to review the controls for spacecraft and related items and highlighted the importance of conducting regular reviews by the agencies, including public input to ensure that the controls are appropriately calibrated from a jurisdictional and license requirement perspective. One commenter stated that they support BIS's goals of streamlining export control regulations for the commercial space industry to secure our industrial base and reduce our export burdens. Another commenter stated that in general, this commenter sees developments in the commercial communications satellite sector rapidly evolving into areas described on the USML to emphasize the point for the importance of regular reviews of the USML and CCL.

BIS response: BIS agrees that these additional proposed changes will help to reinforce U.S. technological innovation and leadership in the commercial space sector while safeguarding national security interests. BIS agrees that there has been rapid innovation and change in the commercial satellite servicing sector and changes are being proposed in this rule to address these developments as described below. BIS welcomes any additional comments from the public on

the specific changes included in this proposed rule, as well as broader comments on reforming space export controls in a way that will continue to protect U.S. national security and foreign policy interests.

Topic 2: Mandate a regular review of the CCL and the USML. A commenter stated that the CCL and USML reviews should be mandatory and ongoing, with a manageable portion of both lists revised annually. This commenter recommended that 20 percent of the CCL and USML be examined each year, leading to a full review and revision over the course of five-year cycles.

BIS response: BIS supports the idea of regularly reviewing the CCL but does not support mandating a particular review schedule. Commerce has not mandated specific time periods for conducting re-reviews of certain categories to allow greater flexibility to focus on regulations that need re-review at certain times. This allows for reviews to occur more often for categories that include items that are rapidly changing, or in paragraphs where there have been issues (e.g., a continued large number of questions) that indicate refinements of the controls may be warranted for adjustment or clarity.

Topic 3: Better distinguish between designed to operate/function in outer space vs. hardware that is "specially designed" for a satellite or spacecraft. One commenter requested that a distinction should be made between items designed to operate/function in outer space vs. hardware that is "specially designed" for a satellite or spacecraft. This commenter recommended that such items should not fall under ECCN 9A515.

BIS response: BIS does not accept making edits to the EAR at this time to address this comment. The commenter's recommended criteria appear too broad to BIS and could result in certain items being released from 9x515 ECCNs that warrant being controlled in a 9x5zz ECCN. These items need to be retained in 9x5zz ECCNs to protect U.S. national security and foreign policy interests. BIS welcomes comments providing more specific examples of what this commenter is stating supported by further rationale for why these particular items should be controlled at a lower level.

Topic 4: Spacecraft related items to retain in 9A515. A commenter stated that specific defense-related commodities that could be militarized need to retain more stringent control and be retained in ECCN 9A515, which includes the following: (1) precision location determination sensors; (2) propulsion for re-entry; (3) vehicle re-

entry thermal protection; (4) security for communications; and (5) high power energy and associated technologies.

BIS response: The proposed rule does not decontrol any items from ECCN 9A515. The rule proposes adding additional requirements to 9A515 to ensure appropriate controls will be in place for any additional spacecraft related item that are moved from the USML to the CCL.

Topic 5: Control parameters for large aperture earth observation cameras needs to be revised to not overreach. One commenter requested that State and Commerce increase the clear aperture diameter threshold for space-qualified optics in USML Category XV(a)(7)(i) and (e)(2), and ECCN 9A515.g.1 from “0.50 meters” to “0.80 meters.” This commenter stated that the U.S. has been building high-resolution commercial imaging satellites with similar sized optics since the 1990s and that, as of 2019, U.S. industry faced global competitors from at least eight countries that can produce one meter-class space-qualified optics. Another commenter stated that non-U.S. built commercial imaging satellites are already using apertures larger than 0.5m and the adverse effect on U.S. industry’s competitiveness in the international market should be considered when evaluating tight controls on performance parameters.

BIS response: This proposed rule would revise the text of 9A515.g.1, which would be responsive to these comments. This rule proposes to revise ECCN 9A515.g.1 to specify it controls space-qualified optics (*i.e.*, lens, mirror, membrane having active properties (*e.g.*, adaptive, deformable)) with a largest individual light collecting or focusing area less than 1,020 cm²; or passive optics with a largest individual light collecting area between 1,020 cm² and 2,150 cm²; or X-ray grazing incidence optics with a total surface area (*i.e.*, shells/segments) of less than 25,000 cm²; or an effective collecting area less than 3,000 cm². State also proposed changes in its rule which would increase the thresholds, which is why BIS is publishing this Commerce proposed rule to ensure that appropriate controls would be in place to protect U.S. national security and foreign policy interests for the items that would move from the USML to the CCL.

Topic 6: Codes for trajectories involving three-body calculations may be covered under fundamental research. A commenter stated that national interest in space activity in Earth’s Cis-Lunar space is turning toward participation by the private or commercial sector. Planning trajectories

in this domain involve three-body calculations of a sort different from the two-body codes employed previously in deep space exploration. The basis of three-body trajectory planning is use of mathematics from the domain of basic or fundamental research. Verified codes that employ this mathematics may need to be reviewed to determine if they are appropriate items for inclusion in either ITAR or EAR control.

BIS response: For items not subject to the ITAR, a person in this scenario should review part 734 to see if any of the specified exclusion criteria may apply. BIS also continuously reviews emerging and foundational technologies (*i.e.*, Section 1758 items) to determine when new entries need to be added to a 0Y521 ECCN or to a new or existing ECCN to ensure appropriate controls are in place under the EAR to protect U.S. national security and foreign policy interests. Section 1758 of ECRA (50 U.S.C. 4801–4852) authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies essential to the national security of the United States. For fundamental research into a technology, the existing EAR criteria in § 734.8 for excluding fundamental research that meets the criteria in that section would already address it. Commerce notes that the development of mathematical techniques under the fundamental research exclusion does not mean that applying those techniques in the development of a specific commodity or software is also fundamental research. BIS also notes that the application of the results from prior fundamental research in the subsequent engineering development phase of research and development, and may also include proprietary information, both of which would be outside the scope of the fundamental research exclusion.

Topic 7: Request for classification guidance for science instruments. One commenter stated that it would be beneficial to have a category that provides control guidance for science instruments such as mass spectrometers (particles, plasmas), Spectral—visible/infrared/ultraviolet/multispectral sensors, and Magnetometers.

BIS response: BIS does not agree that creating a separate ECCN classification or exclusion from CCL-based controls is warranted for these types of science instruments because any type of exclusion would likely be too broad. The existing CCL already controls scientific instruments under certain ECCNs and other scientific instruments are designated as EAR99. BIS welcomes comments in response to this proposed

rule for identifying additional specific scientific instruments that should be excluded from the scope of certain ECCNs.

Topic 8: Remove worldwide license requirement for 9A515.a.4 and 9A515.a.5. One commenter requested BIS remove the worldwide licensing requirement for spacecraft controlled under 9A515.a.4 that are designed for resupply of the International Space Station (ISS) or another U.S. space station (*e.g.*, the Lunar Gateway) controlled similarly under 9A515.a.5.

BIS response: BIS does not agree. With license exceptions under the EAR, BIS can facilitate the exports, reexports, and transfers (in-country) that are consistent with U.S. national security and foreign policy interests while still imposing a restrictive license requirement requiring EAR authorization. BIS notes that this rule does propose the new License Exception Commercial Space Activities (CSA), which addresses some of the concerns surrounding this comment. BIS welcomes comments on the new License Exception CSA.

Topic 9: Small CubeSats should be released to a lower level of control. One commenter noted that CubeSats of 6U size or smaller have become widely available as commercial off-the-shelf (COTS) systems because: (1) advances in satellite technology have provided many improvements including lighter structural elements, capable miniaturized “components,” and low power electronics; (2) standardization of CubeSat architectures has enabled small companies to enter the market as some of the previously demanding technical obstacles have been mitigated or removed. Standardization also has lowered the cost of initial investments required for entering the market, and the need for acquiring data for big data applications has increased the market interest in CubeSats considerably. This commenter specified that CubeSat is a quickly growing market. This commenter stated that because of the COTS availability of 6U or smaller CubeSats warrants further review of this technology for less stringent licensing requirements.

BIS response: BIS does not agree that all CubeSats should be moved to a lower level of control. The EAR controls in place on some CubeSats based on their functionality is needed to protect U.S. national security and foreign policy interests. BIS also notes that EAR authorizations can be an efficient way to export, reexport, or transfer (in-country) items that would otherwise require a license.

Topic 10: Remove certain terrestrial equipment from 9A515.x and add it as a new 9A515.i.

One commenter recommended adding 9A515.i (.i is currently reserved) to control certain terrestrial equipment “specially designed” for “spacecraft.” This commenter stated that this type of equipment is positively described and controlled under 9A004 when used with the James Webb Space Telescope, but when “specially designed” for use in or with a 9A515.b ground control system and simulator are not positively described in 9A515, they are caught under the catch-all category of 9A515.x. This commenter believes that adding telemetry and telecommand equipment and simulators as a 9A515 paragraph (i.e., 9A515.i) instead of capturing the items in a catch-all category, furthers the objective of creating a positive control list which will result in more consistent classifications and licensing of these commodities.

BIS response: BIS does not agree that a separate “items” paragraph is needed in 9A515.i to control this equipment. In the context of ECCN 9A004 and the use of this equipment in the James Webb Space Telescope, it is warranted to call out this specific equipment. In the context of ECCN 9A515 where this equipment may be “specially designed” for use in a variety of spacecraft, it is warranted to maintain the classification of 9A515.x.

Topic 11: Clarification needed for thrusters for whether to classify under ECCNs 9A515 and 9A604. One commenter recommended BIS consider under ECCN 9A604 adopting text similar to that of ECCN 9A515.x by controlling “specially designed” “parts” and “components” of USML Category IV and 9A604 (excluding “specially designed” “parts” of 9A604.e and .f) or create a new “items” paragraph entry under 9A604 to control thrusters “specially designed” for USML Category IV defense articles that are not controlled under USML Category IV. This commenter stated that unlike ECCN 9A515.x, ECCN 9A604.x does not generically control “specially designed” “parts” of 9A604 commodities. This commenter stated that this presents a classification challenge because following the CCL Order of Review process leaves the classifier in a quandary about how to classify the thruster, especially when the item peculiarly responsible for the controlled performance, characteristic, or function of the Category IV defense article is a “part” or “component” of the thruster. This commenter stated that in this case they choose to classify the complete thruster as ECCN 9A604.x and the

“specially designed” “component” as ECCN 9A604.x.

BIS response: Other than certain model and high power rocket motors, the USML currently describes all rocket, SLV, and missile engines and motors. For a thruster that is not subject to the ITAR, in these types of classification scenarios BIS would look to whether the thruster was for spacecraft and met the control parameter in 9A515.h. When asked by the public, BIS has generally advised industry to treat thrusters under USML Category IV or ECCN 9A604. BIS further notes that if the thrusters were for satellite functionality they would be classified under 9A515. BIS reminds exporters, reexporters, and transferors that if a person needs assistance in classifying such items, they may submit a free classification request to BIS using the SNAP-R System on the BIS website at: <https://www.bis.doc.gov>.

Topic 12: License Exception eligibility for 9x515 items. One commenter states that hardware purchased from a foreign vendor often needs to be sent back to the vendor for various reasons, including repair, maintenance, calibration, or exchange. This commenter stated that in the case of hardware that originated abroad, a less stringent licensing requirement is warranted, especially if the U.S. user can document the fact that the hardware does not bear any indication of what it was used for or the data that it produced during use by the U.S. individual.

BIS response: License Exception TMP under § 740.9(a)(6) (Inspection, test, calibration, and repair) already addresses this comment. If the scenario was altered slightly where it involved reexports between two foreign countries for repair or servicing, then License Exception TMP under § 740.9(a)(6) would be used for the initial reexport, and then License Exception RPL under § 740.10(b) would address return of the repaired or serviced commodity in that scenario. License Exception RPL is not needed for the return leg of the transaction in this commenter’s scenario because no EAR authorization would be required to return the serviced or repaired item to the U.S. No additional changes are needed or warranted.

Topic 13: Reduce the number of agencies and organizations/offices that review export licenses, advisory opinions, commodity jurisdictions, and commodity classification requests. A commenter requested that BIS reduce the number of agencies that review license applications, as well as other key documents BIS reviews, to help improve the efficiency of the review processes for the licensing of 9x515 items. This commenter stated that the

multiple layers of review often involving various agencies results in unnecessarily long processing times.

BIS response: BIS’s license review process, including the agencies that review BIS license applications, is mandated by Executive Order (E.O.) 12981, ECRA, and required under the regulatory provisions in part 750 of the EAR. BIS also notes that that other agencies that review BIS licenses play an important role in helping to protect U.S. export control interests when decisions are made whether to approve a license application. BIS clarifies here that the review of advisory opinions and, until fairly recently, classifications, were already done within just BIS in most cases. As a result, any improvements that would need to be made for efficiency would be within BIS. BIS does evaluate on a regular basis ways that these various review processes can be improved. For example, BIS believes that having clear and objective CCL control parameters helps reduce the number of classification requests that BIS receives. BIS is soliciting comments in response to this proposed rule, including on these proposed ECCN control parameters, assists BIS in making the process more efficient if the public’s input helps BIS confirm whether the proposed control parameters are clear and if any refinements are needed.

Topic 14: Improving efficiency of reviews by fully staffing reviewing agencies and continuing to work during a lapse in Federal funding. One commenter made two recommendations for how to improve the efficiency of license review and classifications for spacecraft and related items. This commenter recommended that each of the agencies that review BIS licenses or are involved in reviewing classification requests should be fully staffed. This same commenter recommended that during any U.S. Government lapse in funding that the staff working at these agencies reviewing BIS licenses and classification requests will continue to be able to work.

BIS response: BIS agrees that fully staffing each of the respective agencies would help improve the efficiency of the licensing process. BIS does not have any control over staffing decisions at other agencies. BIS also seeks to be fully staffed to ensure the work of BIS can be completed in a timely and efficient fashion with decisions made that protect U.S. national security and foreign policy interests. BIS notes that there are statutory limitations that prevent BIS, as well as many other U.S. Government employees who are not deemed essential or some other

exempted category, to continue working during a lapse in Federal funding. For essential employees that do continue to work during a lapse in Federal funding, there are statutory limits for the activities that these types of U.S. Government personnel may engage in. BIS notes that even during a lapse in Federal funding that license applications that are critical to health and safety would generally continue to be processed by employees determined to be essential. Because BIS does not impose fees for applying for licenses and submitting classification requests to BIS, there are limits to what can be done to continue operations when there is a lapse in Federal funding. By statute, under ECRA, BIS is prohibited from charging fees to apply for BIS licenses, which benefits exporters, reexporters, and transferors because they do not need to pay a fee to apply for a license. In order to apply for a BIS license or submit a classification request to BIS, an applicant needs to register in BIS's SNAP-R system, but this registration process is free. After any lapse in Federal funding, BIS, as well as the other agencies involved in reviewing BIS licenses or classifications requests, do the best they can to reduce any backlog of applications.

Topic 15: Cost savings to private entities by shifting control of additional items from the USML to the CCL. One commenter in response to the Commerce ANPRM addressing whether there were past cost savings from USML Categories IV or XV to the CCL, stated that, in general, compliance with EAR controls requires fewer company resources (i.e., less time and personnel devoted to drafting and submitting licenses and complying with administrative obligations) than compliance with State's ITAR controls, given the greater flexibility of licensing and exporting under the EAR versus the ITAR.

BIS response: This commenter's statement is consistent with past representations made by BIS and State, as well as by comments received by the public over the years in response to USML to CCL review process rules. BIS notes that this comment was made in response to the Commerce ANPRM, and that, in State's proposed rule published alongside this BIS proposed rule, State is proposing new ITAR exemptions for certain space related activities. BIS is also proposing new EAR License Exception CSA to mirror the ITAR exemptions where it makes sense in the context of the EAR for spacecraft and related items subject to the EAR. Comments specific to the ITAR should be directed to State in response to its

proposed rule, but BIS does welcome comments on whether the changes included in the Commerce and State proposed rules impact the perceived cost savings for entities in the space industry.

Topic 16: Previous movement of certain spacecraft related items led to positive benefits, but more items should be moved to see greater benefits for the space industry. One commenter noted that previous efforts to remove space-related items from the USML and add them to the CCL have had a positive benefit for commercial and civil space opportunities, helping to make U.S. companies more competitive, reduce costs, and facilitate international cooperation. This commenter also stated that there are additional items that, when intended for use in commercial civil applications, should be removed from the USML and controlled on the CCL.

BIS response: BIS acknowledges that moving additional items to the CCL, provided those items are determined to not warrant ITAR control by State, would generally provide greater flexibility under the EAR because of additional flexibility for the availability of EAR license exceptions and difference in license application requirements, such as not requiring a purchase order to apply for a BIS license for 9x515 spacecraft related items.

Topic 17: Potential for new costs savings or other benefits for the space industry. One commenter stated that to the extent that future regulatory changes clarify existing ambiguities and minimize the need for export authorizations under the ITAR and EAR for a single program, such changes would be expected to result in quantifiable cost savings.

BIS response: BIS agrees that reducing the regulatory burden, including from increasing clarity of the regulatory provisions, can result in cost savings for the industry. The proposed addition of License Exception CSA in this proposed rule is responsive to this comment, as well as other changes included in this proposed rule, and the two related Commerce final rule and IFR that are published concurrently with this proposed rule, that also made changes that were responsive to this comment. BIS welcomes comments in response to this proposed rule whether the proposed changes would result in new cost savings for the space industry (e.g., for the space programs that this commenter references).

Topic 18: Movement of items from USML to CCL resulted in increased cost and complexity. One commenter stated that to date, spacecraft and launch

vehicle manufacturers have not seen a cost benefit from moving certain items from the USML to the CCL. This commenter noted that as the categories (i.e., USML Categories and ECCNs) increase in complexity, industry utilizes more resources to classify hardware and associated data/technology.

BIS response: BIS notes that this comment on the Commerce ANPRM is an outlier compared to the other comments received that support the opposite perspective that there have been significant cost savings to the space industry, along with increased opportunities for international collaboration, as a result of these categories increasing in complexity. Because other comments received were supportive, BIS believes that the space industry as a whole has seen these export control changes as reducing costs and increasing opportunities for the space industry. BIS notes that the classification process is a one-time cost, not a recurring cost. In addition, the USML Order of Review and CCL Order of Review should direct a person classifying an item to the appropriate jurisdiction and classification of an item and reduce the need for submitting CJ determinations. BIS welcomes comments in this area whether other commenters feel the same as this commenter taking into consideration the passage of time since 2019 and the additional changes that are proposed to the spacecraft and related items controls in this proposed rule, as well as the Commerce final rule and IFR published concurrently with this proposed rule.

Topic 19: Increased complexity because a greater number of authorizations are available and sometimes needed to cover a large program. One commenter stated that because all spacecraft "components" are not in the same "items" paragraph .x classification under the ECCNs, spacecraft manufacturers utilize more resources to develop and manage export authorizations. This commenter stated that in many cases, multiple authorizations, which may include in certain cases authorization from State and Commerce, are required for one space industry program.

BIS response: BIS agrees that there are a greater number of authorizations that are now available to authorize exports, reexports, and transfers (in-country). However, for those exporters, reexporters, or transferors that prefer to have a single authorization, there are options to take that more simplified approach. For example, there is the ITAR § 120.5(b) process, so if an exporter prefers to have a single authorization in certain cases, they

could do that with a State license or other approval, provided the EAR item was being exported in or with a defense article and the other applicable terms and conditions of § 120.5(b) of the ITAR are met. Ultimately, having greater flexibility with items moving to the EAR means that different authorizations may be available, but may not apply in every case. Similar to the ITAR § 120.5(b) process, if an exporter wishes to have a single authorization under the EAR for all of the items subject to the EAR, that is possible by applying for a BIS license to cover all of the items for that export, reexport, or transfer (in-country). BIS does not disagree with the commenter that having various authorizations potentially available does result in some additional burdens, but BIS believes those additional authorizations and flexibility it affords to exporters, reexporters, and transferors, outweighs the burdens of having greater options for authorizations under the EAR.

Topic 20: Movement of items from USML to CCL has increased, rather than lessened complexity because this was a unilateral effort that did not involve international agreements or partners. One commenter stated that the movement of items from the USML to the CCL (e.g., spacecraft and related items from the USML to the CCL) has compounded, rather than lessened, the fragmentation of the export control system because this reform effort has been a strictly U.S. program. This commenter asserted that the U.S. Government made no effort to reach international agreement at the multilateral export control regimes on either the technologies transferred from the USML to the CCL nor the accompanying non-technical verbiage.

BIS response: BIS does not agree. BIS notes that there is national discretion for how regime members of the multilateral export control regimes fulfill their commitments. The determination by State that certain items did not warrant control under the ITAR and the subsequent moving of those items, where they are controlled on the CCL, to the EAR was consistent with U.S. Government commitments to the multilateral export control regimes. The additional items that are proposed to be moved from the USML to the CCL in the Department of State proposed rule and the EAR controls that would apply to those items in this Commerce proposed rule would also be consistent with U.S. Government multilateral export control regime commitments. For example, the items moved or proposed to be moved to ECCN 9A515 on the CCL would be controlled for national security (NS) reasons, and for certain items for missile

technology (MT) reasons, so nothing that was done in past movements of space and related items from the USML to the CCL, or that is proposed in this proposed rule or the State proposed rule, are inconsistent with U.S. Government multilateral regime commitments. Defined terms under the EAR are consistent with defined terms under the multilateral export control regimes.

Topic 21: License requirement for India for 9A515.e should be added to the Commerce Country Chart or removed. One commenter stated that the regional stability (RS2) license requirement for ECCN 9A515.e destined to India that is in Footnote 7 to the Commerce Country Chart in supplement no. 1 to part 738 is often overlooked. This commenter asked whether this license requirement should be added to the Commerce Country Chart or whether the footnote and license requirement for ECCN 9A515.e should be removed now that India is a member of the Wassenaar Arrangement.

BIS response: BIS clarifies here that the Commerce Country Chart Footnote 7 for the entry for India directs exporters, reexporters, or transferors to review that license requirement. Accordingly, BIS does not agree that the license requirement for India for ECCN 9A515.e is not identified on the Commerce Country Chart. The Commerce Country Chart includes eight footnotes so that exporters, reexporters, and transferors need to be aware of the importance of reviewing any applicable footnote for a country entry they are reviewing on the Commerce Country Chart. BIS also notes that the Footnote 7 structure is important to maintain because India does not require a CCL-based license requirement for RS2 under the RS2 license requirement column on the Commerce Country Chart, so an alternative method is needed to impose that license requirement. BIS has determined that ECCN 9A515.e continues to warrant a license requirement for India. However, BIS also notes that as a Country Group A country that License Exception STA is available to authorize such exports, reexports, or transfers (in-country) destined to or within India.

Topic 22: Clarifying the scope of control status for rovers, habitats, commercial crew vehicles, and other robotic space equipment. Two commenters on the Commerce ANPRM requested that BIS clarify and update the control status for rovers, habitats, commercial crew vehicles, and other robotic space equipment that are designed to operate in outer space but are not hardware “specially designed”

for a satellite or spacecraft. These commenters stated that such commodities should not fall under ECCN 9A515.

BIS response: This proposed rule is responsive to these comments with the revisions this rule proposes for removing the reference in Note 1 to 9A515 to “planetary rovers” and “in-space habitats” and the addition of Note 7 to 9A515.

II. Overview of This Proposed Rule

This rule proposes two sets of changes to controls for spacecraft and related items under the EAR pursuant to the legal authority of the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). Section 1753(a) of ECRA (50 U.S.C. 4812) authorizes the regulation of “(1) the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons.” First, BIS proposes amending the EAR to conform to State’s proposed changes related to USML Categories IV and XV. Second, BIS proposes adding a new license exception to the EAR for certain Commercial Space Activities (CSA), which would mirror certain exemptions proposed to be made available for defense articles under the ITAR. BIS welcomes comments that identify any further amendments to the EAR (and corresponding amendments to the ITAR) that better enable a globally competitive U.S. space industrial base while continuing to protect U.S. national security and foreign policy interests.

A. EAR Changes To Conform to ITAR Changes Related to USML Categories IV and XV

BIS is proposing changes to Export Control Classification Number (ECCN) 9A515, the addition of 9C515, and changes to 9D515 and 9E515 in supplement no. 1 to part 774 of the EAR, described under section III.A.1. through .4. BIS estimates that these amendments would result in an additional 90 license applications submitted to BIS annually.

This rule does not propose any changes to ECCN 9A004, but BIS does welcome comments from the public on whether any additional changes to ECCN 9A004 should be made, including whether changes should be made to ECCN 9A004 to remove references to items paragraphs in 9A004 that are otherwise subject to the ITAR or classified under ECCN 9A515. BIS has maintained the current structure of ECCN 9A004 for consistency with the

Wassenaar Arrangement, but does welcome any additional comments on whether the current structure for ECCN 9A004 and how that cross references items subject to ITAR and ECCN 9A515 may be improved.

1. ECCN 9A515

a. *Revises 9A515.a to remove text that is not needed as part of the control parameter.* In ECCN 9A515, this rule proposes revising 9A515.a to remove the phrase ‘whether designated developmental, experimental, research or scientific’ because this text is not needed as part of the control parameter. ECCN 9A515.a controls all “spacecraft,” including satellites, and space vehicles and “sub-orbital craft” not enumerated in USML Category XV or described in ECCN 9A004.u or .w, that meet the control parameters under one of the “items” paragraphs under 9A515.a.1 through a.5, so the additional text that this rule would remove is not needed to describe the scope of commodities controlled.

b. *Revises 9A515.a.4 to impose a broader control parameter.* This rule proposes expanding the control parameter under 9A515.a.4 to control “spacecraft” that perform remote proximity on-orbit services to other spacecraft (e.g., docking, delivery, refueling, or servicing), provide life sustaining operations (e.g., space stations, space hotels, outposts, or laboratories), or capture, collect, and remove space debris. This expanded control parameter is needed to control additional “spacecraft” that would be moved to the CCL from the USML.

c. *Excluding planetary rovers and in-space habitats not identified in ECCN 9A004 or USML Category XV(a) from the scope of 9A515.a.* This rule proposes revising Note 1 to 9A515.a to remove the terms “planetary rovers” and “in-space habitats.” This rule also proposes adding new Note 7 to 9A515 to specify these commodities are not within the scope of 9A515.

d. *Revision to Note 2 to 9A515.d and .e to remove text for clarity.* Note 2 to 9A515.d and .e, which provides guidance on the scope of Application Specific Integrated Circuits (ASICs) that are controlled under ECCN 9A515.d. and .e, is proposed to be modified to more clearly describe the items in 9A515.d and .e and related controls.

e. *Revision to 9A515.g.1 to impose a broader control parameter.* This rule proposes expanding the control parameter under 9A515.g.1 to control space-qualified optics (i.e., lens, mirror, membrane having active properties (e.g., adaptive, deformable)) with a largest individual light collecting or focusing

area less than 1,020 cm²; or passive optics with a largest individual light collecting area between 1,020 cm² and 2,150 cm²; or X-ray grazing incidence optics with a total surface area (shells/segments) of less than 25,000 cm²; or an effective collecting area less than 3,000 cm². This expanded control parameter is needed to control additional space-qualified optics that would be moved to the CCL from the USML.

f. *Revision to 9A515.h to remove the term “spacecraft.”* This rule proposes removing the term “spacecraft” before the term thrusters in 9A515.h because the term is not needed. The heading of ECCN 9A515 already makes it clear that the thrusters that are controlled under this ECCN would be thrusters that are for “spacecraft” when these thrusters meet the control parameters under 9A515.h.

g. *Addition of 9A515.i.* This rule proposes adding a new 9A515.i to control Electric (Plasma/Ion) thrusters and their associated power control systems operating at in input power of less than 20kW and having an individual thrust of at least 400 milli-Newtons, but not also having a specific impulse better than 1,900 seconds, which the Department of State has proposed moving from the USML to the CCL.

h. *Addition of 9A515.j.* This rule proposes adding a new 9A515.j to capture Control moment gyroscopes (CMG) “specially designed” for spacecraft that provide an angular momentum of less than 2.0 (N m sec) or provide a torque of less than Newton meters (N m), which the Department of State has proposed moving from the USML to the CCL. This rule also proposes adding a Note 4 to 9A616.j to specify that if a CMG has an angular momentum of at least 2.0 Newton meter seconds (N m sec), provide a torque of at least 6.0 Newton meters (N m), and are “specially designed” for spacecraft it is subject to USML Category XV(e)(13).

i. *Addition of 9A515.k.* This rule proposes adding a new 9A515.k to control hold-down or satellite release mechanisms (i.e., clampbands, adapters, dispensers, or motorized lightbands) not described in USML Category IV(e)(5), excluding those for 1U CubeSats or less.

j. *Clarification of 9A515.y.* This rule proposes adding the term ‘as follows’ at the end of the introductory text of 9A515.y to make it clear that any item that is “specially designed” for purposes of 9A515.x that also meets any of the control parameter descriptions under 9A515.y.1 through y.6 is controlled under 9A515.y.

k. *Addition of Note 8 to 9A515 to specify rovers and in-space habitats are*

not classified under ECCN 9A515. This rule proposes to add new Note 8 to 9A515 to specify that rovers and in-space habitats are not classified under ECCN 9A515. Following the CCL Order of Review, a person classifying these commodities would go to the beginning of CCL Category 9 and review the other ECCNs that may be applicable (e.g., ECCN 9A004.r for in-space habitats) and then if none of those are applicable, then the items in question would be designated as EAR99.

l. *Conforming changes.* This rule proposes as a conforming change reserving paragraphs (1) through (w) to reflect the proposed additions to 9A515. In addition to complying with Office of Federal Register (OFR) drafting requirements for the designation of Notes, this proposed rule, the Note to 9A515.a would get redesignated as Note 1 to 9A515.a; Note 1 to 9A515.d and .e would get redesignated as Note 2 to 9A515.d and .e; Note 2 to 9A515.d and .e would get redesignated as Note 3 to 9A515.d and .e; and Note to 9A515.x would get redesignated as Note 5 to 9A515.x, Note 5 to 9A515.b and .x would get redesignated as Note 6 to 9A515.b and .x, and Note 6 to 9A515 would get redesignated as Note 7 to 9A515. Lastly, in ECCN 9A515 in the List of Items Controlled section under the Related Controls paragraph, this rule proposes revising the first sentence to removes the phrase ‘enumerated on the USML’ and add in its place the phrase ‘described on the USML’ to conform with ITAR terminology used to describe the USML.

2. Addition of New 9C515

a. *Materials classified under new 9C515.* This rule proposes adding a new “materials” ECCN to the CCL by adding a new ECCN 9C515, which would control materials, coatings, treatments for reducing in-orbit signatures (i.e., radar, optical, ultraviolet, and infrared) of spacecraft, not described by USML Categories XIII(j) or XV(e)(22), such as blankets, films, tapes, and paints as identified in the List of Items Controlled. This new ECCN 9C515 would only control “materials” that are not subject the ITAR. This rule proposes these materials would be controlled under ECCN 9C515, which would consist of materials, coatings, treatments for reducing in-orbit signatures (i.e., radar, optical, ultra violet, and infrared) of spacecraft such as blankets, films, tapes, and paints with either of the following characteristics specified under 9C515.a.1 (i.e., designed to reduce radar, ultra-violet, & infrared signature by 20% or more), or 9C515.a.2

(i.e., designed to reduce optical signature by 50% or more).

b. *Note to 9C515 would clarify materials included and excluded under this new ECCN.* This rule also proposes a note to 9C515 that would clarify the scope of this new ECCN. The new Note under paragraph (1) would specify that materials controlled by 9C515 include structural materials and coatings (including paints), “specially designed” for reduced or tailored reflectivity or emissivity in the microwave, infrared, or ultraviolet spectra. Paragraph (2) of the note to 9C515 would specify that this entry does not control materials used for the purpose of reducing brightness from the ground. These first two paragraphs of the Note to 9C515 would be intended to focus the scope of this new ECCN 9C515, so it would not be broader than intended. Paragraph (3) to the Note to 9C515 would include a cross reference back to the USML to specify that 9C515 applies to certain “materials” for commodities that meet the definition of defense articles under 22 CFR 120.31 of the ITAR, which describes similar commodities “subject to the ITAR,” including USML Category XIII.

c. *License requirements and license exception eligibility for 9C515.* This rule proposes adding new ECCN 9C515 to impose appropriate controls under the EAR for this material that would be moved from the USML to the CCL. This material would be controlled for NS1, RS1, and AT1. No list-based license exceptions would be available for this “material.” License Exception STA under the paragraph (c)(1) authorization for Country Group A:5 countries would be eligible, but (c)(2) of License Exception STA (§ 740.20(c)(2)) may not be used for any item in 9C515.

3. ECCN 9D515

a. *Addition of 9D515.c.* This proposed rule would add new ECCN 9D515.c to clarify that this software would be within the scope of 9D515. New 9D515.c would specify that Space Situational Awareness (SSA) analysis “software” used to model, simulate, optimize, or perform operations involving spacecraft maneuvers, trajectory planning, or debris tracking would be within the scope of this ECCN. The control parameter would include when this “software” is incorporated into a ground system, as well as when the “software” is incorporated into a “spacecraft.”

b. *Conforming change.* In ECCN 9D515’s List of Items Controlled section under the Related Controls paragraph (1), this rule proposes revising the first sentence to remove the phrase

‘enumerated on USML Category XV’ and add in its place the phrase ‘described in USML Category XV’ for consistency with ITAR terminology used to describe the USML. This rule also proposes revising the same sentence to remove the phrase ‘is subject to the control of USML paragraph XV(f)’ and add in its place a more general reference of ‘subject to the ITAR.’

4. ECCN 9E515

This rule proposes revising ECCN 9E515 to add new items paragraphs 9E515.g, .h, and .i to control certain “technology” for new 9A515.i, .j, and .k that this rule also proposes adding to ECCN 9A515 as described further under III.A.1.a through .e.

a. *Addition of 9E515.g.* This rule proposes adding a new 9E515.g to control “technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.i. This would be a necessary conforming change to reflect the proposed new addition of the control parameter under ECCN 9A515.i to ensure that an EAR authorization would be required under NS1, RS1 worldwide except for exports and reexports to Australia, Canada, and the United Kingdom.

b. *Addition of 9E515.h.* This rule proposes adding a new 9E515.h to control “technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.j. This would be a needed conforming change to reflect the proposed new addition of the control parameter under ECCN 9A515.j to ensure that an EAR authorization would be required under NS1, RS1 worldwide except for exports and reexports to Australia, Canada, and the United Kingdom.

c. *Addition of 9E515.i.* This rule proposes adding a new 9E515.i to control “technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.k. This would be a needed conforming change to reflect the proposed new addition of the control parameter under ECCN 9A515.k to ensure an EAR authorization would be required under NS1, RS1 worldwide except for exports and reexports to Australia, Canada, and the United Kingdom.

d. *Conforming change.* This rule proposes reserving “items” .j through .x to account for the proposed additions of ECCN 9E515.g, .h, and .i.

B. Addition of New License Exception for Commercial Space Activities (CSA)

1. New License Exception CSA

In part 740 (License Exceptions) to the EAR, BIS proposes adding a new license exception under § 740.26 for Commercial Space Activities (CSA) for official space agency programs and space tourism and research. The new License Exception would consist of paragraphs (a) (*Scope*), (b) (*Exclusions*), and (c) (*Authorizations*). Under *Authorizations*, (c)(1) would provide an authorization for ‘official space agency programs’ and (c)(2) would provide an authorization for *Space Tourism and Research*. The State proposed rule published concurrently with this Commerce proposed rule, proposes similar ITAR exemptions for these types of Civil Space Activities specific to defense articles that are subject to the ITAR.

Paragraph (a) (*Scope*) would specify the two types of authorizations that are available to authorize certain 9x5zz and 9A004 items for certain specified commercial space activities. Paragraph (a) would specify that License Exception CSA would authorize under paragraph (c)(1) exports, reexports, and transfers (in-country) of items subject to the EAR and classified in 9x5zz or 9A004 ECCNs for certain ‘official space agency programs.’ The paragraph (c)(1) authorization would only be available when the export, reexport, or transfer (in-country) is entirely within the scope of an official space agency program identified in paragraph (c)(1)(i) of License Exception CSA, and subject to the exclusions in paragraph (b). License Exception CSA would also authorize under paragraph (c)(2) exports, reexports, and transfers (in-country) of manned spacecraft subject to the EAR and “parts,” “components,” “accessories,” and “attachments” subject to the EAR solely for use in or with such spacecraft, provided the requirements under paragraph (c)(2)(i) through (iv) are met, and subject to the exclusions in paragraph (b).

Paragraph (b) would clarify that License Exception CSA is not available for any export, reexport, or transfer (in-country) that is excluded under paragraphs (b)(1), (2), (3), (4), or (5) of License Exception CSA. These exclusions would not allow the use of License Exception CSA when: (1) a “proscribed person” (e.g., any entity listed on the Entity List) is a party to the transaction; (2) a license is required under a part 744 end use or end user control; (3) if the export, reexport, or transfer (in-country) is for the purpose of establishing offshore procurement

arrangements or producing any item classified in a 9x515 or 9A004 ECCN offshore; (4) any export or reexport to or transfer (in-country) within a destination listed in Country Groups D:1, D:4, or D:5 in supplement no. 1 to part 740; or (5) the export, reexport, or transfer (in-country) is any radiation-tolerant hardware classified in ECCN 9A515.d or .e or related “technology.” These exclusions from the use of License Exception CSA for these specified end users, end uses, and destinations of concern are needed to protect U.S. national security and foreign policy interests.

The proposed paragraph (c)(1) authorization would authorize exports, reexports, and transfers (in-country) of items subject to the EAR for an ‘official space agency programs.’ The paragraph (c)(1) authorization would also require that the export, reexport, or transfer (in-country) would need to be entirely within the scope of an official space agency program identified in paragraph (c)(1)(i) of License Exception CSA, and subject to the exclusions in paragraph (b). Paragraph (c)(1)(i) (*Eligible ‘official space agency programs’*) would specify, for purposes of the paragraph (c)(1) authorization under License Exception CSA, the following programs for formal spacecraft, independent of the launch vehicles that deliver them to orbit, are eligible for License Exception CSA under the paragraph (c)(1) authorization, provided the terms and conditions of paragraph (c)(1) are met: (1) NASA’s Lunar Gateway; (2) NASA’s Mars Sample Return (a program that entails multiple spacecraft); (3) Nancy Grace Roman Telescope; (4) The Orion spacecraft; (5) Commercial Low Earth Orbit Development program; and (6) Habitable Worlds Observatory. Paragraph (c)(1)(i) would specify that the authorization under paragraph (c)(1) is only available for items that are subject to the EAR that are for an export, reexport, or transfer (in-country), that is entirely within the scope of ‘official space agency programs.’ This rule proposes including an example in paragraph (c)(1)(i) for the export of an ECCN 9A515.x “component” to a space contractor in France that is “producing” a higher level assembly that will be for use in NASA’s Lunar Gateway program to assist understanding of the types of exports, reexports, or transfers (in-country) that License Exception CSA would authorize under the paragraph (c)(1) authorization.

The proposed paragraph (c)(2) would authorize the export, reexport, or transfer (in-country) of manned spacecraft subject to the EAR classified under ECCNs 9A004 or 9A515 and

“parts,” “components,” “accessories,” and “attachments” subject to the EAR solely for use in or with such spacecraft, provided the requirements under paragraphs (c)(2)(i) through (iv) for the spacecraft are met and the export, reexport, or transfer (in-country) is not otherwise excluded from the use of License Exception CSA under paragraph (b). This rule proposes requirements under paragraphs (c)(2)(i) through (iv) that would require that the spacecraft must be limited to: (1) suborbital trajectories; (2) the purpose of the activity must be limited to either space tourism or supporting “fundamental research;” (3) the activity must not transfer registration, control, or ownership of the spacecraft to a foreign person; (4) the spacecraft’s destinations, including planned diverts and contingencies, must be approved by the Federal Aviation Administration (FAA) or its foreign equivalent in all countries; and (5) must not include any destinations listed in Country Groups D:5 or E. The requirement under paragraph (c)(2)(iv) that would allow for foreign equivalents, but excludes foreign equivalents of any destination listed in Country Group D:5 or E, would be intended to ensure that a country such as Russia, which is listed in Country Group D:5, could not issue a foreign equivalent that could meet the terms of the paragraph (c)(2)(iv) requirement, even if the export, reexport, or transfer (in-country) was not destined to or within a destination listed in Country Groups D:1, D:4, or D:5.

Because of the burgeoning space tourism and space research industries, providing paragraph (c)(2) of License Exception CSA would provide more efficient authorization for activities of this type that do not raise national security or foreign policy concerns, provided the terms and conditions of using License Exception CSA are followed. BIS welcomes comments on License Exception CSA, in particular whether the requirements in order to use License Exception CSA are clear and meet the objectives described here. BIS estimates these proposed changes to add new License Exception CSA under § 740.26 would result in a decrease of 100 license applications submitted to BIS annually.

2. Conforming Changes

In § 740.2, as a conforming change, this rule proposes adding a new paragraph (a)(5)(i)(G) to specify that proposed License Exception CSA that would be added to § 740.26 of the EAR would be one of the license exceptions that may be used to export MT-controlled items to destinations other

than to or within those identified in Country Groups D:4 or D:5 (see supplement no. 1 to part 740 of the EAR). This proposed rule as a conforming change for the addition of new paragraph (a)(5)(i)(G), would also revise paragraph (a)(5)(i)(E) to remove the word ‘and’ and add in its place a semi-colon, and would revise paragraph (a)(5)(i)(F) to remove the period at the end of the sentence and add a semi-colon in its place and the word ‘and’ at the end of the paragraph.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included ECRA (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. In particular, and as noted elsewhere, Section 1753 of ECRA (50 U.S.C. 4812) authorizes the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction. Further, Section 1754(a)(1)–(16) of ECRA (50 U.S.C. 4813(a)(1)–(16)) authorizes, inter alia, the establishment of a list of controlled items; the prohibition of unauthorized exports, reexports, and transfers (in-country); the requirement of licenses or other authorizations for exports, reexports, and transfers (in-country) of controlled items; apprising the public of changes in policy, regulations, and procedures; and any other action necessary to carry out ECRA that is not otherwise prohibited by law. Pursuant to Section 1762(a) of ECRA (50 U.S.C. 4821(a)), these changes can be imposed in a final rule without prior notice and comment.

Rulemaking Requirements

1. E.O. 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects and distributive impacts and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been designated a “significant regulatory action” under E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject

to the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute;
- 0694–0122, “Licensing Responsibilities and Enforcement;” and
- 0607–0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission.

BIS estimates that the changes included in this proposed rule would result in a decrease of 10 multi-purpose applications. This reduction would be attributable to the addition of License Exception CAS, which would result in an estimated decrease of 100 license applications per year and an estimated increase of 90 license applications per year as a result of the proposed movement of additional space-related items from the USML to the CCL, which BIS estimates would result in a net reduction of 10 license applications annually, if this Commerce proposed rule and State proposed rule are published in final form. However, the reduction of burden falls within the existing estimates currently associated with these control numbers.

Additional information regarding these collections of information—including all background materials—can be found at: <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

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

4. Pursuant to Section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). However, BIS is accepting comments on this proposed rule.

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

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are proposed to be amended as follows:

PART 740—LICENSE EXCEPTIONS

- 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

- 2. Section 740.2 is amended by:

- a. Revising paragraphs (a)(5)(i)(E) and (F); and

- b. Adding paragraph (a)(5)(i)(G).

The revisions and addition read as follows:

§ 740.2 Restrictions on all License Exceptions.

* * * * *

(a) * * *

(5)(i) * * *

(E) License Exception AVS

(§ 740.15(b)(1) through (4), (c)(1), (2), (e), and (f) of the EAR);

(F) License Exception APR for (§ 740.16(c) through (f) of the EAR); and
(G) License Exception CSA (§ 740.26 of the EAR).

* * * * *

- 3. Add § 740.26 to read as follows:

§ 740.26 Commercial Space Activities (CSA).

(a) *Scope.* License Exception CSA authorizes under paragraph (c)(1) of this section exports, reexports, and transfers (in-country) of items subject to the EAR for certain ‘official space agency programs,’ when the export, reexport, or transfer (in-country) is entirely within the scope of an official space agency program identified in paragraph (c)(1)(i) of this section, and subject to the

exclusions in paragraph (b) of this section. License Exception CSA authorizes under paragraph (c)(2) of this section exports, reexports, and transfers (in-country) of manned spacecraft subject to the EAR and “parts,” “components,” “accessories,” and “attachments” subject to the EAR solely for use in or with such spacecraft, provided the requirements under paragraph (c)(2)(i) through (iv) of this section are met, and subject to the exclusions in paragraph (b) of this section.

(b) *Exclusions.* License Exception CSA is not available for any export, reexport, or transfer (in-country) that is excluded under paragraphs (b)(1), (2), (3), (4), or (5) of this section.

(1) A “proscribed person,” (*e.g.*, any entity listed on the Entity List) is a party to the transaction;

(2) A license is required under a part 744 end use or end-user control;

(3) For purposes of establishing offshore procurement arrangements or producing any item classified in a 9x515 (including 9E515 “production” technology) or 9A004 ECCN offshore;

(4) Any export or reexport to or transfer (in-country) within a destination listed in Country Groups D:1, D:4, or D:5 in supplement no. 1 of this part; or

(5) Any export, reexport, or transfer (in-country) of any radiation-tolerant hardware classified in ECCN 9A515.d or .e or related “technology.”

(c) *Authorizations*—(1) *Authorization for ‘official space agency programs.’* This paragraph (c)(1) authorizes exports, reexports, and transfers (in-country) of items subject to the EAR for ‘official space agency programs,’ provided the export, reexport, or transfer (in-country) is entirely within the scope of an official space agency program identified in paragraph (c)(1)(i) of this section, and subject to the exclusions in paragraph (b) of this section.

(i) *Eligible ‘official space agency programs.’* For purposes of the authorization under this paragraph (c)(1), the following programs for formal spacecraft, independent of the launch vehicles that deliver them to orbit, are eligible for License Exception CSA under the authorization of this paragraph (c)(1), provided the terms and conditions of this paragraph (c)(1) are met. The authorization under this paragraph (c)(1) is only available for items that are subject to the EAR that are for an export, reexport, or transfer (in-country), that is entirely within the scope of an ‘official space agency programs’ (*e.g.*, the export of an ECCN 9A515.x “component” to a space contractor in France that is “producing”

a higher level assembly that will be for use in NASA's Lunar Gateway program).

(A) NASA's Lunar Gateway;

(B) NASA's Mars Sample Return (a program that entails multiple spacecraft);

(C) Nancy Grace Roman Telescope;

(D) The Orion spacecraft;

(E) Commercial Low Earth Orbit

Development program; and

(F) Habitable Worlds Observatory.

(ii) [Reserved]

(2) *Authorization for Space Tourism and Research.* This paragraph (c)(2) authorizes the export, reexport, or transfer (in-country) of manned spacecraft subject to the EAR classified under ECCNs 9A004 or 9A515 and "parts," "components," "accessories," and "attachments" subject to the EAR solely for use in or with such spacecraft, provided the requirements under paragraphs (c)(2)(i) through (iv) of this section for the spacecraft are met and the export, reexport, or transfer (in-country) is not otherwise excluded from the use of License Exception CSA under paragraph (b) of this section:

(i) The spacecraft must be limited to suborbital trajectories;

(ii) The purpose of the activity must be limited to either space tourism or supporting "fundamental research;"

(iii) The activity must not transfer registration, control, or ownership of the spacecraft to a foreign person; and

(iv) The spacecraft's destinations, including planned diverts and contingencies, must be approved by the Federal Aviation Administration or its foreign equivalent in all countries, and must not include any destinations listed in Country Groups D:5 or E.

PART 774—THE COMMERCE CONTROL LIST

■ 4. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 5. Supplement no. 1 to part 774 is amended by:

■ a. Revising ECCNs 9A515;

■ b. Adding ECCN 9C515; and

■ c. Revising ECCNs 9D515 and 9E515.

The revisions and addition read as follows:

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

* * * * *

9A515 "Spacecraft" and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
NS applies to entire entry, except .e., .x, and .y.	NS Column 1.
RS applies to entire entry, except .e., .x, and .y.	RS Column 1.
MT applies to microcircuits in 9A515.d and 9A515.e.2 when "usable in" "missiles" for protecting "missiles" against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects) MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41×10^5 newton seconds.	MT Column 1.
NS applies to 9A515.x ...	NS Column 2.
RS applies to 9A515.e and .x.	RS Column 2.
RS applies to 9A515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

License Requirement Note:

(1) *The Commerce Country Chart is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, .a.2, .a.3, .a.4, and .g. See § 742.6(a)(9), which specifies that such commodities are subject to a worldwide license requirement, except to Australia, Canada, and the United Kingdom.*

(2) *ECCN 9A004.a through .f apply to certain space launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, on-board systems or equipment, and terrestrial equipment. They are listed in ECCN 9A004.a through .f in order to harmonize 9A004 with the Wassenaar Arrangement Dual-Use List, even though the controls for these items are found under ECCN 9A515 and to direct exporters, reexporters, and transferors to see USML Category IV for 9A004.a. See ECCN 9A515 for 9A004.b through .f, and .h. See this ECCN 9A004 for .g, .h, .r, .s, and .u through .y.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: \$1500

GBS: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for "spacecraft" in ECCNs 9A515.a.1, a.2, a.3, or a.4, "sub-orbital craft," or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and

"600 series" items). (2) License Exception STA may not be used if the "spacecraft" controlled in ECCN 9A515.a.1, a.2, a.3, or a.4 contains a separable or removable propulsion system described in USML Category IV(d)(2) or USML Category XV(e)(12) described on the USML and designated MT. (3) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

List of Items Controlled

Related Controls: Spacecraft, launch vehicles and related articles that are described on the USML, and technical data (including "software") directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle (including both planning and onsite support), or furnishing any assistance (including training) in the launch failure analysis or investigation for items in ECCN 9A515.a, are "subject to the ITAR." All other "spacecraft," as enumerated below and defined in § 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific "space-qualified" items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station (ISS), the James Webb Space Telescope (JWST), and "specially designed" "parts" and "components" therefor. See USML Category XI(c) for controls on certain "Monolithic Microwave Integrated Circuit" ("MMIC") amplifiers. See ECCN 9A610.g for pressure suits used for high altitude aircraft.

Related Definitions: "Microcircuit" means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

Items:

See ITAR § 126.8(d) for treatment of "spacecraft" described in ECCN 9A515 when exported, reexported, or transferred (in-country) with defense articles "subject to the ITAR" incorporated in and included as integral parts of the item.

a. "Spacecraft," including satellites, and space vehicles and "sub-orbital craft" not described in USML Category XV or described in ECCN 9A004.r, .u or .w, that:

a.1. Have electro-optical remote sensing capabilities and having:

a.1.a. An active (e.g., adaptive, deformable) individual light collecting area of less than 1,020 cm²;

a.1.b. A passive individual light collecting area of less than 2,150 cm²;

a.1.c. X-ray, not otherwise described in paragraph (e)(2)(i) or (ii) of USML Category XV, with a total effective collecting area less than 3,000 cm²; or

a.1.d. X-ray not otherwise described in paragraph (e)(2)(i) or (ii) of USML Category XV, and with a total effective collecting area greater than or equal to 3,000 cm² and an angular resolution greater than 30 milliarcsseconds.

a.2. Have remote sensing capabilities beyond NIR (i.e., SWIR, MWIR, or LWIR);

a.3. Have radar remote sensing capabilities (e.g., AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;

a.4. Perform remote proximity on-orbit services to other spacecraft (e.g., docking, delivery, refueling, or servicing), provide life sustaining operations (e.g., space stations, space hotels, outposts, or laboratories), or capture, collect, and remove space debris; or

a.5. Are not described in ECCN 9A515.a.1, .a.2, .a.3, or .a.4.

Note 1 to 9A515.a: *ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary and interplanetary probes, and "sub-orbital craft," not identified in ECCN 9A004 or USML Category XV(a).*

b. Equipment for telemetry, tracking, and control, as follows:

b.1. Ground control systems and training simulators "specially designed" for telemetry, tracking, and control of the "spacecraft" controlled in paragraphs 9A004.u or 9A515.a;

b.2. Terrestrial equipment "specially designed" for "spacecraft," as follows:

b.2.a. Telemetry and telecommand equipment "specially designed" for any of the following data processing functions:

b.2.a.1. Telemetry data processing of frame synchronization and error corrections, for monitoring of operational status (also known as health and safe status) of the "spacecraft bus;" or

b.2.a.2. Command data processing for formatting command data being sent to the "spacecraft" to control the "spacecraft bus;"

b.2.b. [Reserved]

b.3. Simulators "specially designed" for "verification of operational procedures" of "spacecraft."

Technical Note: *For the purposes of 9A515.b.3, "verification of operational procedures" is any of the following:*

1. Command sequence confirmation;
2. Operational training;
3. Operational rehearsals; or
4. Operational analysis.

c. [Reserved]

d. Microelectronic circuits (e.g., integrated circuits, microcircuits, or MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are "specially designed" for defense articles, "600 series" items, or items controlled by ECCNs 9A004.v or 9A515:

d.1. A total dose of 5×10^5 Rads (Si) (5×10^3 Gy (Si));

d.2. A dose rate upset threshold of 5×10^8 Rads (Si)/sec (5×10^6 Gy (Si)/sec);

d.3. A neutron dose of 1×10^{14} n/cm² (1 MeV equivalent);

d.4. An uncorrected single event upset sensitivity of 1×10^{-10} errors/bit/day or less, for the CREME-MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and

d.5. An uncorrected single event upset sensitivity of 1×10^{-10} errors/part or less for a fluence of 1×10^7 protons/cm² for proton energy greater than 50 MeV.

e. Microelectronic circuits (e.g., integrated circuits, microcircuits, or MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND "specially designed" for defense articles described in USML Category XV or items controlled by ECCNs 9A004.u or 9A515:

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) (1×10^3 Gy(Si)) and $< 5 \times 10^5$ Rads (Si) (5×10^3 Gy(Si)); and a single event effect (SEE) (i.e., single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) ≥ 80 MeV-cm²/mg; or

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)) and not described in 9A515.d.

Note 2 to 9A515.d and .e: *See USML Category XI for military electronics. See 3A611.f for PLDs and ASICs programmed for 600 series items.*

Note 3 to 9A515.d and .e: *See 3A001.a and .z for controls on radiation-hardened microelectronic circuits "subject to the EAR" that are not controlled by 9A515.d or 9A515.e.*

f. Pressure suits (i.e., space suits) capable of operating at altitudes greater than or equal to 55,000 ft above sea level.

g. Remote sensing components "specially designed" for "spacecraft" described in ECCNs 9A515.a.1 through 9A515.a.4 as follows:

g.1. Space-qualified optics (i.e., lens, mirror, membrane having active properties (e.g., adaptive, deformable)) with a largest individual light collecting or focusing area less than 1,020 cm²; or passive optics with a largest individual light collecting area between 1,020 cm² and 2,150 cm²; or X-ray grazing incidence optics with a total surface area (shells/segments) of less than 25,000 cm²; or an effective collecting area less than 3,000 cm²;

g.2. Optical bench assemblies "specially designed" for ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 "spacecraft;" or

g.3. Primary, secondary, or hosted payloads that perform a function of ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 "spacecraft."

h. Thrusters using bi-propellants or mono-propellants that provide thrust equal to or less than 150 lbf (i.e., 667.23 N) vacuum thrust.

i. Electric (Plasma/Ion) thrusters and their associated power control systems operating at an input power of less than 20kW and having an individual thrust of at least 400 mN but not also having a specific impulse better than 1,900 sec.

j. Control moment gyroscopes (CMG) "specially designed" for spacecraft that provide an angular momentum of less than 2.0 (N m sec) or provide a torque of less than Newton meters (N m).

Note 4 to 9A515.j: *If a CMG has an angular momentum of at least 2.0 Newton meter seconds (N m sec), provide a torque of at least 6.0 Newton meters (N m), and are "specially designed" for spacecraft it is subject to USML Category XV(e)(13).*

k. Hold-down, or satellite release mechanisms (i.e., clambands, adapters, dispensers, or motorized lightbands), not

described by USML Category IV(e)(5), excluding those for 1U CubeSats or less.

l. through v. [RESERVED]

w. "Parts," "components," "accessories," and "attachments" that would otherwise be within the scope of ECCN 9A515.x but that have been identified by the interagency as warranting control in 9A515.w, as follows:

w.1. [Reserved]

x. "Parts," "components," "accessories" and "attachments" that are "specially designed" for defense articles described in USML Category XV or items controlled by 9A515, and that are NOT:

x.1. Described on the USML or elsewhere within ECCNs 9A515 or 9A004;

x.2. Microelectronic circuits and discrete electronic components;

x.3. Described in ECCNs 7A004 or 7A104;

x.4. Described in an ECCN containing "space-qualified" as a control criterion (i.e., 3A001.b.1, 3A001.e.4 or .z, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2);

x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 and .z for controls on these items);

x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 and .z for controls on these items); or

x.7. Elsewhere specified in ECCN 9A515.y.

Note 5 to 9A515.x: *"Parts," "components," "accessories," and "attachments" described on the USML, either in Category XV(e) or elsewhere, are subject to the ITAR.*

Note 6 to 9A515.b and .x: *This note clarifies the scope of controls over baseband units (BBU). For purposes of 9A515.b and .x, a BBU means a device that interprets the original frequency range of a transmission signal. These devices are not controlled under 9A515.b or .x when they do not perform telemetry, track, and control.*

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y, as follows:

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Thermistors for spacecraft applications;

y.3. RF microwave bandpass ceramic filters (e.g., Dielectric Resonator Bandpass Filters);

y.4. Hall effect sensors for spacecraft applications;

y.5. Subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors for spacecraft applications;

y.6. Flight cable assemblies for spacecraft applications;

y.7. Public address (PA) systems;

y.8. Audio selector panels;

y.9. Spacecraft crew, passenger, or participant lavatories and body waste management systems;

y.10. Spacecraft crew, passenger, or participant hygiene facilities and systems;

y.11. Spacecraft crew, passenger, or participant crew rest equipment or sleeping quarters;

y.12. Spacecraft crew, passenger, or participant galleys or food preparation or serving systems;

y.13. Spacecraft crew, passenger, or participant entertainment systems;

y.14. Spacecraft crew, passenger, or participant exercise systems;

y.15. Spacecraft crew, passenger, or participant laundry systems;

y.16. Spacecraft crew, passenger, or participant safety systems, not including launch abort systems/launch escape systems, ejector seats, spacesuits, flight suits, helmets, or “parts” and “components” therefor;

y.17. Spacecraft crew, passenger, or participant storage units, facilities, or systems (for items related to human safety, welfare, and health);

y.18. Spacecraft crew, passenger, or participant medical facilities or health-related systems for monitoring, evaluating, or assessing, or for providing treatments;

y.19. Spacecraft crew, passenger, or participant information systems (e.g., personal laptops and phones);

y.20. Name plates, identification plates, and identification systems;

y.21. Internal, external, and emergency lighting systems;

y.22. Humidity and CO2 removal systems;

y.23. Potable water storage systems;

y.24. Water regeneration systems;

y.25. Air filters, filter networks, or air quality systems;

y.26. Space heaters, temperature sensors, or thermostats for human habitation;

y.27. Environmental control systems for human habitation;

y.28. Spacecraft environmental control systems (e.g., air conditioner, air distribution, air filtration and sanitation, CO2 removal, cabin pressure control, dehumidifier, fire suppression system, nitrogen oxygen recharge system, heater systems, thermostats);

y.29. Plant growth systems;

y.30. Fire extinguishers;

y.31. Flame, smoke, or CO2 detectors;

y.32. Fire suppression systems;

y.33. Spacecraft crew, passenger, or participant seats, other than ejection seats, and “parts” and “components;”

y.34. Spaceflight crew, passenger, or participant ejection seat mounted survival aids;

y.35. Spaceflight crew, passenger, or participant life rafts;

y.36. Spacecraft crew, passenger, or participant locator beacons;

y.37. Spacecraft crew, passenger, or participant mirrors;

y.38. Spacecraft crew, passenger, or participant windows;

y.39. Spacecraft locator beacons;

y.40. Viewing windows on non-crewed spacecraft;

y.41. Temperature sensors and pressure transducers;

y.42. Thermal control pumps, accumulators, fluid filters and filter assemblies, control valves, heat exchangers, and radiators;

y.43. Hydraulic, pneumatic, oil, fuel, gas, propellant, fluid, and thermal control fluid reservoirs, filters, filter assemblies, tubing, lines, hoses, check valves, and quick disconnects, and associated fittings, couplings, clamps, brackets, adapters, valves, gaskets, shims, and o-rings;

y.44. Gauges and indicators;

y.45. Filtered and unfiltered panel knobs, indicators, annunciator panels, switches, buttons and dials;

y.46. Spacecraft tires and brake systems (does not include sintered mix or carbon/carbon materials);

y.47. Bearings (e.g., Ball, roller, wheel);

y.48. Energy dissipating pads for cargo or crew;

y.49. Spacecraft bus structures;

y.50. Bracket adapters for bus and payload structures;

y.51. Latches and hinges;

y.52. Boom assemblies;

y.53. Cables, cable assemblies, and connectors;

y.54. Batteries and associated battery management circuitry;

y.55. Germanium coated polyimide tapes (e.g., Kapton tape);

y.56. Multiplexors and Demultiplexors (MUX & DEMUX);

y.57. Switches, switch bank assemblies, beam select switches, transfer switch assemblies, switch matrices, thermal switches;

y.58. Magnetic torque bars;

y.59. Filters, filter networks;

y.60. Network switches;

y.61. Reflectors, antennas;

y.62. Antenna feed horns;

y.63. Diplexers, modulators, demodulators;

y.64. Second surface mirrors;

y.65. Backshells, pins and contacts;

y.66. Measurement devices;

y.67. Electrical power distribution and control units;

y.68. Electrical connectors;

y.69. Non-propulsive landing systems (e.g., skids, inflatable);

y.70. Electric fans;

y.71. Microphones;

y.72. Speakers;

y.73. Circuit breakers; and

y.74. Printed circuit boards “specially designed” for items classified under 9A515.y

Note 7 to 9A515: An item operating on any celestial body other than Earth is treated as if it is on Earth for classification purposes on the CCL.

Note 8 to 9A515: Rovers and in-space habitats are not classified under ECCN 9A515.

9C515 MATERIALS, COATINGS, TREATMENTS FOR REDUCING IN-ORBIT SIGNATURES (i.e., RADAR, OPTICAL, ULTRAVIOLET, AND INFRARED) OF SPACECRAFT SUCH AS BLANKETS, FILMS, TAPES, AND PAINTS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry	AT Column 1.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9C515.

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items:

a. Materials, coatings, treatments for reducing in-orbit signatures (i.e., radar, optical, ultraviolet, and infrared) of spacecraft, not described by USML Categories XIII(j) or XV(e)(22), such as blankets, films, tapes, and paints with either of the following characteristics:

- Designed to reduce radar, ultra-violet, & infrared signature by 20% or more, or
- Designed to reduce optical signature by 50% or more.

Note 1 to 9C515:

(1) *Materials controlled by this entry include structural materials and coatings (including paints), “specially designed” for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra.*

(2) *This entry does not control materials used for the purpose of reducing brightness from the ground.*

(3) *For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), which describes similar commodities “subject to the ITAR” (See 22 CFR parts 120 through 130, including USML Category XIII).*

* * * * *

9D515 “Software” “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

<i>Control(s)</i>	<i>Country chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry except 9D515.c, .x, and .y.	NS Column 1.
RS applies to entire entry except 9D515.c, .x, and .y.	RS Column 1.
NS applies to 9D515.c and .x.	NS Column 2.
RS applies to 9D515.c and .x.	RS Column 2.
RS applies to 9D515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR)

may not be used for 9D515.b, .d, or .e. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “software” in 9D515.

List of Items Controlled

Related Controls: (1) “Software” directly related to articles described in USML Category XV is subject to the ITAR. (2) See also ECCNs 3D001, 6D001, 6D002, and 6D991 for controls of specific “software” “specially designed” for certain “space-qualified” items. (3) For “software” for items listed in 9A004.d that are incorporated into “spacecraft payloads,” see the appropriate “software” ECCN within those Categories.

Related Definitions: N/A

Items:

a. “Software” (other than “software” controlled in paragraphs .b, .d, or .e of this entry) “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.d or .e) or 9B515.

b. “Source code” that:

b.1. Contains the algorithms or control principles (e.g., for clock management), precise orbit determination (e.g., for ephemeris or pseudo range analysis), signal construct (e.g., pseudo-random noise (PRN) anti-spoofing) “specially designed” for items controlled by ECCN 9A515;

b.2. Is “specially designed” for the integration, operation, or control of items controlled by ECCN 9A515;

b.3. Contains algorithms or modules “specially designed” for system, subsystem, component, part, or accessory calibration, manipulation, or control of items controlled by ECCN 9A515;

b.4. Is “specially designed” for data assemblage, extrapolation, or manipulation of items controlled by ECCN 9A515;

b.5. Contains the algorithms or control laws “specially designed” for attitude, position, or flight control of items controlled in ECCN 9A515; or

b.6. Is “specially designed” for built-in test and diagnostics for items controlled by ECCN 9A515.

c. Space Situational Awareness (SSA) analysis “software” used to model, simulate, optimize, or perform operations involving spacecraft maneuvers, trajectory planning, or debris tracking.

d. “Software” “specially designed” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.d.

e. “Software” “specially designed” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.e.

f. through w. [Reserved]

x. “Software” “specially designed” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.x.

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 9A515.y.

* * * * *

9E515 “Technology” “required” for the “development,” “production,” operation, installation, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except 9E515.x and .y.	NS Column 1.
MT applies to technology for items in 9A515.d, .e.2, and .h, and 9B515.a controlled for MT reasons.	MT Column 1.
NS applies to 9E515.x ...	NS Column 2.
RS applies to 9E515.x ...	RS Column 2.
RS applies to 9E515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

License Requirement Note: *The Commerce Country Chart is not used for determining license requirements for “technology” classified ECCN 9E515.f. See § 742.6(a)(9), which specifies that such “technology” is subject to a worldwide license requirement, except to Australia, Canada, and the United Kingdom.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ECCN 9E515.b, .d, .e, or .f unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and “600 series” items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “technology” in 9E515.

List of Items Controlled

Related Controls: Technical data directly related to articles described in USML Category XV are subject to the ITAR. See also ECCNs 3E001, 3E003, 6E001, and 6E002 for specific “space-qualified” items. See ECCNs 9E001 and 9E002 for technology for the International Space Station, the James Webb Space Telescope (JWST) and “parts,” “components,” “accessories,” and “attachments”

“specially designed” therefor. See USML Category XV(f) for controls on technical data and defense services related to launch vehicle integration.

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.a.1, a.2, a.3, a.4, .b, .d, .e, or .g), ECCN 9B515, or “software” controlled by ECCN 9D515.a.

b. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of software controlled by ECCN 9D515.b.

c. [Reserved]

d. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.d.

e. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.e.

f. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515.a.1, a.2, a.3, a.4, or .g.

g. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.i.

h. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.j.

i. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.k.

j. through w. [Reserved]

x. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.x.

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A515.y or 9D515.y.

Note 1 to 9E515: [Reserved]

Note 2 to 9E515: *Human spaceflight preparation activities directly related to, or required for the following, are not subject to the ITAR or the EAR:*

(i) “Spacecraft” access, ingress, and egress, including the operation of all “spacecraft” doors, hatches, and airlocks;

(ii) Physiological training (e.g., human-rated centrifuge training or parabolic flights, pressure suit or spacesuit training/operation);

- (iii) Medical evaluation or assessment of the spaceflight passenger or participant;

(iv) Training for and operation by the passenger or participant of health and safety related hardware (e.g., seating, environmental control and life support, hygiene facilities, food preparation, exercise equipment, fire suppression, communications equipment, safety-related clothing or headgear) or emergency procedures;

(v) Viewing of the interior and exterior of the spacecraft or terrestrial mock-ups;

(vi) Observing “spacecraft” operations (e.g., pre-flight checks, landing, in-flight status);

(vii) Training in “spacecraft” or terrestrial mock-ups for connecting to or operating passenger or participant equipment used for purposes other than operating the “spacecraft;” or

(viii) Donning, wearing or utilizing the passenger’s or participant’s flight suit, pressure suit or spacesuit, and personal equipment.

* * * * *

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.
[FR Doc. 2024–23975 Filed 10–17–24; 4:15 pm]
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